(24,124)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 414.

ELI P. WILLIAMS, ELMER WILLIAMS, AND CHARLES H. WILLIAMS, PLAINTIFFS IN ERROR,

vs.

BEN F. JOHNSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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1 UNITED STATES OF AMERICA, *ss:*

To Ben F. Johnson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the state of Oklahoma wherein Eli P. Williams, Elmer Williams and Charles H. Williams are the plaintiffs in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Samuel W. Hayes, chief justice of the supreme court of the state of Oklahoma, this 9th day of February, in the year of our Lord one thousand nine hundred and fourteen.

SAMUEL W. HAYES,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

[Endorsed:] Received this writ on the 9th day of February 1914, served same on the 11th day of February 1914 by delivering a True Copy to Bond & Melton, Att'ys for defendants in error.

First Person	50
1 copy	25
	75

John C. Lewis, Sheriff, by J. A. Thompson, Deputy. Filed Feb. 19 1914. W. H. L. Campbell, Clerk.

2 In the Supreme Court of Oklahoma.

No. 1568.

ELI P. WILLIAMS, ELMER WILLIAMS, CHARLES H. WILLIAMS,
Plaintiffs in Error,
vs.
BEN F. JOHNSON, Defendant in Error.

Filed Feb. 6, 1914. W. H. L. Campbell, Clerk.

Petition for Allowance of a Writ of Error to the Supreme Court of the United States.

To the Honorable Samuel W. Hayes, Chief Justice of the Supreme Court of the State of Oklahoma:

Your petitioners, the plaintiffs in error in above entitled case, respectfully represent that on March 12, 1912, a final judgment and

decision was made and entered by this Honorable Court in above entitled case then pending on appeal therein.

That this court is the highest court in said state in which a decision in said suit could be had.

Your petitioners, feeling themselves aggrieved by said judgment and decision of this court, claim the right to remove said judgment by Writ of Error to the Supreme Court of the United States for review, under Section 709, Revised Statutes of the United States, 1901.

Because a federal question is involved and was presented, considered and decided by this court against your petitioners which will appear from the final judgment therein.

The record in this case does show that this action involves the construction, application, validity and constitutionality of the following Acts of Congress:

Act of June 28, 1898 (30 Stat. L. 495),

Act of July 1, 1902 (32 Stat. L. 641),

Act of April 21, 1904 (33 Stat. L. 204).

The decision of this Court rendered in this case in construing said Acts of Congress was adverse to the rights claimed by
3 your petitioners under said Acts, and is contrary to the true intent and meaning of said Acts of Congress, to the great loss and damage of your petitioners.

Wherefore, your petitioners pray for a reversal of said judgment and the allowance of a Writ of Error from said decision and judgment to the Supreme Court of the United States, and for a citation, and for such other general relief as may to the Court be deemed just and equitable.

(Assignment of Errors herewith.)

ELI P. WILLIAMS,
ELMER WILLIAMS,
CHARLES H. WILLIAMS,
Plaintiffs in Error.

Let the Writ issue February 6th, 1914.

SAMUEL W. HAYES,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

The bond in this case which is not to operate as a supersedeas is fixed at five hundred dollars.

This Feb. 6, 1914.

SAMUEL W. HAYES,
Chief Justice.

Filed Feb. 6, 1914. W. H. L. Campbell, Clerk.

4 In the Supreme Court of Oklahoma.

No. 1568.

ELI P. WILLIAMS, ELMER WILLIAMS, CHARLES H. WILLIAMS,
Plaintiffs in Error,
vs.
BEN F. JOHNSON, Defendant in Error.

Filed Feb. 6, 1914. W. H. L. Campbell, Clerk.

Assignment of Errors.

Come now the plaintiffs in error and say that the decision and final judgment of this court is erroneous as follows, to-wit:

1. That the court erred in sustaining the judgment of the court below and in holding that the Act of Congress of April 21, 1904 (33 Stat. L. 204) was constitutional and applicable to the land involved herein, and that the restrictions upon the sale of said land were lawfully removed under said Act, and that Selin Taylor had the lawful right to convey and did convey said land thereunder.

Because said removal was repugnant to and violative of the restrictions against the sale of said land placed in the Patent to Selin Taylor by the grantors in said Patent, the Choctaw and Chickasaw Nations, who were the owners of the fee simple title to said land, and had the lawful right to restrict the sale of said land by Selin Taylor as they did in said Patent.

Because said removal of restrictions is also repugnant to and violative of the restrictions against the sale of said land contained in the Act of Congress of July 1, 1902 (32 Stat. L. 641), and because said Act is a binding agreement for a valuable consideration upon Selin Taylor, the Choctaw and Chickasaw Nations and the United States.

Because said removal of restrictions is repugnant to the Constitution of the United States and to the Fifth Amendment thereof, and is unconstitutional and void.

Because said restrictions are repugnant to and violative of the pre-existing contract rights of the Choctaw and Chickasaw Nations and Selin Taylor, to their great loss and damage.

5 2. That said Act of Congress is a binding agreement upon the United States, the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws, as will appear from the Act itself.

We quote the following therefrom (said Act is entitled as follows):

"An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."

* * * * * * *

"Witnesseth that, in consideration of the mutual undertakings herein contained, it is agreed as follows:"

* * * * * * *

Section 68 is as follows:

"(68). No act of Congress or treaty provision, nor any provision of the Atoka agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw nations."

Section 73 is in part as follows:

"(73). This agreement shall be binding upon the United States and upon the Choctaw and Chickasaw nations and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following:"

Said agreement was approved by Congress July 1, 1902, and ratified by a majority vote of the Choctaw and Chickasaw tribes September 25, 1902, as provided in said agreement.

3. The court erred in not holding that said Act of Congress of April 21, 1904 was unconstitutional, so far as applied to the removal of restrictions on the land involved herein, and that the removal of restrictions thereunder was illegal and void, and that Selin Taylor was without power to convey said land, and that the deeds of Selin Taylor (on which the title to said land of the adverse claimants is rested) were illegal and void, and in not rendering judgment in favor of the plaintiffs in error.

4. That the decision and judgment of the court in above entitled case is contrary to law.

Wherefore, plaintiffs in error pray that the judgment herein be reversed and set aside, and a judgment rendered in favor of
6 the plaintiffs in error, and for such other general relief as may to the court be deemed just and equitable.

ELI P. WILLIAMS,
ELMER WILLIAMS,
CHARLES H. WILLIAMS,
Plaintiffs in Error.

7 In the Supreme Court of Oklahoma.

No. 1568.

WILLIAMS et al.
vs.
JOHNSON.

Brief in Support of Petition for Allowance of Writ of Error.

The rule is settled that where questions arising under the constitution and laws of the United States were presented in the Supreme Court of the state, and were by that court considered and decided against the party invoking their protection, that such cases are appealable by Writ of Error to the Supreme Court of the United States.

San Jose Land & Water Co. vs. San Jose Ranch Co., 189 U. S., 177.

Mallett vs. North Carolina, 181 U. S., 589.

It is apparent upon the face of the judgment rendered herein (122 Pac. 485), that there were questions arising under the constitution and laws of the United States in this case, presented, considered and decided by this Honorable Court against your petitioners who invoked the protection thereof.

We have here a case that is clearly within the rule set out above, and is appealable by Writ of Error to the Supreme Court of the United States.

Respectfully submitted,

ELI P. WILLIAMS,
ELMER WILLIAMS,
CHARLES H. WILLIAMS,
Plaintiffs in Error.

Filed Feb. 6, 1914. W. H. L. Campbell, Clerk.

8 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, between Eli P. Williams, Elmer Williams, Charles H. Williams and Ben F. Johnson, a manifest error hath happened, to the great damage of the said Eli P. Williams, Elmer Williams and Charles H. Williams, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 6 day of February, in the year of our Lord one thousand nine hundred and fourteen.

[The Seal of the District Court of the United States for the Western District of Oklahoma.]

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
Clerk of the District Court of the United States for the Western District of Oklahoma.

Allowed by
SAMUEL W. HAYES,
Chief Justice of the Supreme Court of Oklahoma.

The bond in this case which is not to operate as a supersedeas is fixed at five hundred dollars.

This Feb. 6, 1914.

SAMUEL W. HAYES,
Chief Justice.

Filed Feb. 7, 1914. W. H. L. Campbell, Clerk.

9 In the Supreme Court of Oklahoma.

#1568.

ELI P. WILLIAMS, ELMER WILLIAMS, and CHARLES H. WILLIAMS,
Plaintiffs in Error,
vs.
BEN F. JOHNSON, Defendant in Error.

Bond for Costs from the Supreme Court of Oklahoma to the Supreme Court of the United States.

Know all men by these presents:

That we, Eli P. Williams, Elmer Williams, Chas. H. Williams, as principals and The United States Fidelity & Guaranty Company of Baltimore Maryland, as sureties are held and firmly bound unto Ben F. Johnson, in the full and just sum of $500.00 (the bond in this case which is not to operate as a supersedeas is fixed at $500.00) to be paid to the said Ben F. Johnson, his executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 14th day of February in the year of our Lord One Thousand nine hundred and fourteen.

Whereas lately in the Supreme Court of the State of Oklahoma, in a suit pending in said court between said Eli P. Williams, Elmer Williams and Chas. H. Williams, as plaintiffs in error and said Ben F. Johnson, as defendant in error, a judgment was rendered against the said Eli P. Williams, Elmer Williams, Chas. H. Williams, dismissing the appeal of said Eli P. Williams, Elmer Williams and Chas. H. Williams, and the said Eli P. Williams, Elmer Williams and Chas. H. Williams, as aforesaid having obtained a writ of error and filed a copy of same in the Clerk's office in the said Court to reverse the judgment in aforesaid suit and a citation directed to the said Ben F. Johnson, citing and admonishing him to be and appear
10 at the Supreme Court of the United States at Washington, within thirty days of the date thereof.

Now the condition of the above obligation is such that if the said Eli P. Williams, Elmer Williams and Chas. H. Williams, shall prosecute their said writ of error to effect and answer costs

if they shall fail to make their plea good then the above obligation to be void else to remain in full force and virtue.

ELI P. WILLIAMS.
ELMER WILLIAMS.
CHARLES H. WILLIAMS,
[SEAL.] THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By FRANK O. JOHNSON,
Its Attorney in Fact.

Approved by
SAMUEL W. HAYES,
Chief Justice of the Supreme Court of Oklahoma.

Endorsed: Bond. No. 1568. Eli P. Williams, et al. vs. Ben F. Johnson. Filed Feb. 19, 1914. W. H. L. Campbell, Clerk.

11 In the Supreme Court of the State of Oklahoma.

No. 1568.

ELI P. WILLIAMS et al., Plaintiffs in Error,
vs.
BEN F. JOHNSON, Defendant in Error.

Præcipe.

To the clerk of the Supreme Court of Oklahoma:

Whereas, the plaintiffs in error are now about to carry, by writ of error, above entitled case to the Supreme Court of the United States, for review and for the purpose of reducing the size of the transcript of record in this case as provided in the rules of the Supreme Court of the United States, you will find indicated below the portions of the record that Plaintiffs in Error desire to be incorporated into the transcript of the record on such writ of error:

Plaintiffs' Amended Petition .....(Case-made) Page 22
Defendant's Answer to Plaintiffs' Amended Petition to quiet title.....(Case-made) Page 35
Power of Attorney—"Exhibit C".....(Case-made) Page 43
Certificate of Removal of Restrictions "Exhibit D" .....(Case-made) Page 46
Allotment Patent to Selin Taylor, "Exhibit E"(Case-made) Page 34
Demurrer (to Amended Answer of Defendant) (Case-made) Page 50
Judgment of trial court.....(Case-made) Page 51
Petition in Error (you will find attached to Case-made).

You will annex to and transmit with above record a copy of the opinion of the Supreme Court of Oklahoma filed in this case.

ELI P. WILLIAMS,
ELMER WILLIAMS,
CHARLES H. WILLIAMS,
Plaintiffs in Error.

To whom it may concern:

This is to certify that on January 27 1914 I served the within Præcipe upon Bond and Melton attorney- by delivering to them a true copy thereof.

JOHN C. LEWIS,
Sheriff of Grady County, State of Oklahoma,
By J. A. THOMPSON, *Deputy.*

Sheriff's Return.

Received this writ this the 26 day of Jan. 1914. Executed same by delivering a true copy — Adrian Melton of the firm of Bond and Melton on the 27 day of Jan. 1914.

JOHN C. LEWIS, *Sher.,*
By J. A. THOMPSON, *Dep.*

First person ..... .50
1 copy ..... .25
.75

Filed Feb. 6, 1914. W. H. L. Campbell, Clerk.

12 And be it remembered, that thereafter, and to-wit: on the 28th day of October, A. D. 1909, the plaintiff herein, Ben F. Johnson, filed in said cause his first Amended Petition which said Amended Petition is in words and figures as follows, to-wit:

13 In the District Court within and for the Fifteenth Judicial District of the State of Oklahoma within and for Grady County.

BEN F. JOHNSON, Plaintiff,
vs.
ELI P. WILLIAMS, CHARLES WILLIAMS, and ELMER WILLIAMS, Defendants.

Amended Petition to Quiet Title.

Comes now Ben F. Johnson, and leave of the court having been first had, files this his amended petition in the above and foregoing action and for said amended petition states:

That the defendants herein are residents of Kansas, that the property involved in this action is located in Grady County, State of Oklahoma. For cause of action against said defendants plaintiff states:

First. That plaintiff is the legal owner in fee simple and in the actual and peaceful possession of the following described premises in Grady County, State of Oklahoma, described as follows:

Lot No. 5 Five, in section Thirty (30) Township Nine (9) North, range seven (7) West, containing 40.19 acres of land more or less.

This plaintiff states that said land was allot-ed to one Selin Taylor; that the said Selin Taylor, was a member of the Choctaw Tribe of Indians; that on November the 22nd 1904, there was issued to him a patent covering the above described land, signed by Green McCurtain Principal chief of the Choctaw Nation
14 and Douglas H. Johnson, Governor of the Chickasaw Nation, and Thomas Ryan acting Secretary of the Interior in behalf of the United States. That at the time of the allotment of said lands the same were, under the law, inalienable. That on the 9th day of February 1906, the United States Indian Agent issued to Selin Taylor a certificate No. 2458, removing the disabilities of the said Selin Taylor on the alienation of said Lot 5 in section 30, being the land herein described, and that after said certificate of removal and to-wit: on the 16th day of February, 1906, Selin Taylor, for a good *a* valuable consideration delivered to C. B. Campbell his warranty deed conveying to the said C. B. Campbell, all of Lot 5 in section 30 aforesaid, which said deed is now of record in the office of the register of deeds in Grady County, Book 16 page 286. Afterwards, to-wit, on the 13th day of March, 1906, for a good and valuable consideration C. B. Campbell and Maggie Campbell, his wife, conveyed to Ben F. Johnson all their right, title and interest in and to said Lot 5 in section 30 together with other land. That thereupon the said Ben F. Johnson, plaintiff herein, acquired the title to said land.

And plaintiff further says that on the 15th day of November, 1906, Selin Taylor made, executed and delivered to James E. Whiteheld a certain warranty deed, which said deed was joined in by Ellen Taylor, wife of Selin Taylor, conveying to the said James E. Whiteheld Lot No. 5 in Section 30 aforesaid. That afterwards, to-wit: on the 22nd day of October, 1909, *1909,* James E. Whiteheld, for a valuable consideration transferred and conveyed
15 to J. E. McNeill all of his interest in and to said land above, and that afterwards, to-wit; on the 25th day of October, 1909, J. E. McNeill conveyed to Ben F. Johnson all right title and interest that he might have in and to Lot 5 in Section 30. That by reason of the conveyances aforesaid the plaintiff now holds the legal and equitable title to said lands; that all conveyances aforesaid are now of record in the office of the register of deeds of Grady County, Oklahoma.

Second. Plaintiff further says that said defendants herein, Eli P. Williams, Charles Williams and Elmer Williams claim title to said land by virtue of a certain instrument executed by Selin Taylor on the lands herein described on the 11th day of March 1907. That said instrument was filed for record in the office of the clerk of the District Court, at Chickasha, and duly recorded in Book 30 page 603, and that the same is now a matter of record in the office of the register of deeds of Grady County, Oklahoma, in said book 30 page 603. That said pretended power of attorney is void and of no force and effect. That by reason of the execution thereof the said defendants herein acquired no rights, title, interest or estate in said lands above described.

Third. That said pretended power of attorney heretofore executed by the defendants herein, is of no force and effect; is void, and conveys to them no right, title or interest in said property, and simply clouds the title of this plaintiff, and unless cancelled and set aside by this court, will irreparibly injure the title and interest of the plaintiff herein.

Wherefore, plaintiff files this his Amended Petition herein, and asks that on final hearing, hereof, he have judgment against said defendants and each of them, setting aside and cancelling
16 said alleged Power of Attorney above set out and now of record in book 30 page 603, and decreeing and forever quieting the title to Lot 5, Section 30, Township Nine North, Range eight West, in Grady County, Oklahoma, in this plaintiff, and that the title to said plaintiff be quieted, and that said defendants and each of them, be perpetually barred and enjoined from setting up or claiming any title or interest or estate of any kind or nature in said premises above described, adverse to the title of the plaintiff; and for all costs of suit herein expended, and for such other and further relief as may be equitable and proper in the premises.

BOND & MELTON,
Attorneys for Plaintiff.

Said amended petition of plaintiff is endorsed as follows, to-wit: No. 2159. Ben F. Johnson vs. Eli P. Williams, et al. Amended Petition. Bond & Melton, Att'ys for Plaintiff. Filed at Chickasha, Okla., Oct. 28, 1909. J. R. Callham, District Clerk, Grady County, Okla.

Attached to the Amended Petition of Plaintiff are the following instruments: Attached upon the request of the defendants herein and by order of the Court: Said instruments being in words and figures as follows, to-wit:

17 *Quit Claim Deed.*

STATE OF OKLAHOMA,
County of ——, ss:

This indenture made this 21st day of October, 1909 between James E. Whitehead and Julia Whitehead, his wife, of the first part and J. E. McNeill of the second part,

Witnesseth, that the said parties of the first part in consideration of the sum of One ($1.00) Dollar and other good and valuable consideration to them in hand duly paid, the receipt whereof is hereby acknowledged, has remised, released, conveyed and quit claimed and do by these presents quit claim unto the said party of the second part, and to his heirs and assigns forever, all right, title, interest and estate and claim or demand, both in law and in equity, in and to all of the following described property, to-wit:

Lot No. 5 Five of Section Thirty (30), township nine (9) North, Range seven (7) West being 40.19 acres of land, and being a portion of the surplus allotment of Selin Taylor. Together with all and

singular the hereditaments and appurtenances thereunto belonging to have and to hold the above described premises unto said J. E. McNeill, his heirs and assigns, so that we the said J. E. Whitehe*l*d and Julia Whitehead, or either of us, or any one in our name or behalf, shall or will herein claim or demand any right, title or interest to the said premises or any part thereof, but they and every one of them shall be these presents he excluded and forever barred.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES E. WHITEHEAD. [SEAL.]
JULIA WHITEHEAD. [SEAL.]

STATE OF OKLAHOMA,
County of Pittsburg, ss:

18 Before me, W. R. White a Notary Public within and for the county and State aforesaid on this the 21st day of October 1909 personally came and appeared J. E. Whitehead and Julia Whitehead, known to me to be the identical persons who executed the within and foregoing instrument, and they and each of them stated and acknowledged to me that they executed the same of their own free and voluntary act and deed and for the uses and purposes therein set forth.

[SEAL.] W. R. WHITE,
Notary Public.

My commission expires Apr. 28, 1912.

Filed at Chickasha for record Oct. 26, 1909, at 8 o'clock A. M. Book 52, Page 493.

G. W. PETTY,
Register of Deeds, Grady County, Okla.

Also the following instrument is attached to plaintiffs' Amended Petition as aforesaid:

This endenture made this 25th day of Oct. A. D. 1909, between J. E. McNeill, a single man of Grady County, Oklahoma, of the first part, and Ben F. Johnson, of Grady county, State of Oklahoma, of the second part,

Witnesseth, that said party of the first part, in consideration of the sum of One Thousand Dollars ($1,000.00) the receipt whereof is hereby acknowledged, do-, by these presents, grant, bargain, sell and convey unto the said party of the second part heirs and assigns, the following described real estate situated in the county of Grady, and State of Oklahoma, to-wit: Lot No. Five (5) of Section Thirty (30) Township Nine (9) North Range Seven (7) West, containing 40.19 acres of land more or less.

To have and to hold the same, together with all and singular the tenemants, hereditaments and appurtenances thereunto be-
19 longing, or in any wise appertaining forever. And said J. E. McNeill for himself, his heirs, executors, or administrators, do hereby covenant, promise and agree to and with the said party

of the second part that at the delivery of these presents he is lawfully seized in his own right of an absolute and indefi-siable estate of inheritance, in fee simple, of, in, and to, all and singular, the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former grants, titles, charges, judgments, assessments, and incumberances, of what nature and kind soever, and that he will warrant and defend forever same unto said party of the second part, his heirs and assigns against the said party of the first part, his heirs and all and every person whom-soever, lawfully claiming or to claim the same.

In witness thereof, the said party of the first part, has hereunto set his hand the day and year first above written.

J. E. McNEILL.

STATE OF OKLAHOMA,
Grady County:

Before me, Adrian Melton, a Notary Public in and for said County and State, on this 25th day of October, A. D. 1909, personally appeared J. E. McNeill, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed and for the uses and purposes therein set forth.

[SEAL.] ADRIAN MELTON,
Notary Public.

My commission expires M'c'h 24, 1912.

Recorded in Book 68, page 479, at 8 o'clock A. M. on the 26 day of Oct., 1909.

[SEAL.] G. W. PETTY,
Reg. of Deeds.

20 The following deed is also attached to plaintiffs' amended Petition; aforesaid:

Warranty Deed.

Know all men by these presents: That, I, Selin Taylor, and Ellen Taylor, his wife, of Corrine, Indian Territory, for and in consideration of the sum of One Thousand Dollars, to us paid by James E. Whitehead of South McAlester, Indian Territory, the receipt whereof is hereby acknowledged, have granted bargained and by these presents, do grant, bargain, sell and convey unto said James E. Whitehead, and unto his heirs, administrators, and assigns the following described real estate situated in the — Nation, Indian Territory, to-wit:

Lot number five (5) of section thirty (30) Township Nine (9) North range seven west, being 40.19 acres, being a portion of the surplus allotment of Selin Taylor, restrictions upon the same have been removed by act of Secretary of the Interior Feb. 9th, 1906, as evidenced by certificate No. 2458, with all of the privileges, appurte-

nances and improvements situated, appertaining and thereunto belonging.

To have and to hold unto the said James E. Whitehead, heirs and assigns forever. And I, the said Selin Taylor for myself my executors, and administrators, do covenant, with the said James E. Whitehead, his heirs, and assigns, that I am lawfully seized in fee simple of the aforegranted premises, that they are free from all encumbrances, that I have a good right to sell and convey the same as herein done; that I will and my executors and administrators, shall forever warrant and defend the same to the quiet enjoyment of said James E. Whitehead, his heirs and assigns, against all lawful claims and demands of all persons.

And I, Ellen Taylor, wife of Selin Taylor, the grantor herein, do hereby join in this conveyance and for the consideration aforesaid, convey and renounce all right, and homestead in and to said property and for said consideration do hereby release and relinquish unto the said James E. Whitehead his heirs and assigns all right, claim and possibility of dower in and to the said property.

In testimony whereof we hereunto set out hands and affix our seals this 15 day of Nov. A. D. 1906.

SELIN TAYLOR.
ELLEN TAYLOR (her x mark).

Witnesses to mark:
THOS. S. HARDISON.
LYMAN WHITE.

Acknowledgment.

INDIAN TERRITORY,
Central District, ss:

Before me, Lyman W. White, a Notary Public in and for the Central District of the Indian Territory, duly commissioned and acting, on this 15 day of Nov. A. D. 1906, personally appeared Selin Taylor and Ellen Taylor, his wife, to me well known to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had each executed the within and foregoing conveyance for the consideration and purposes therein mentioned and set forth.

And I further certify that on the same day voluntarily appeared before me, the said Ellen Taylor, wife of said Selin Taylor, to me well known to be the party signing the foregoing conveyance and in the absence of her said husband, declared that she had of her own free will signed the relinquishment of dower for the purposes therein contained and set forth without compulsion or undue influence of her husband and I do so certify. In testimony whereof, I hereunto set my hand this 15th day of Nov. A. D. 1906.

[SEAL.] LYMAN W. WHITE,
Notary Public.

My commission expires April 13, 1909.

Filed at Chickasha for record Nov. 19, 1906, 8 o'clock A. M. Book 25, Page 213.

J. W. SPEAKE,
Dep. Cl'k ex-Officio Rec. Dist. 19, *Ind. Ter.*

21 *Warranty Deed.*

Know all men by these presents, that we, C. B. Campbell and Maggie Campbell, his wife, of the City of Minco, of Chickasaw Nation, in the Indian Territory, for and in consideration of the sum of Two Thousand Dollars, to us in hand paid by Ben F. Johnson, the receipt of which is hereby acknowledged, have granted, bargained and sold and do by these presents grant, bargain, sell and convey unto the said Ben F. Johnson and unto his heirs and assigns forever, the following described real estate situated in the Chickasaw Nation in the Indian Territory, to-wit:

Lot Number five (5) of section thirty (30) in township number nine (9) North of Range seven (7) west of Indian Meridian, also the Northeast quarter (¼) of the northeast quarter (¼) and the west half (½) of the southeast quarter (¼) of the Northeast quarter (¼) of section twenty-five (25) in township Nine (9) North of range eight (8) west of the Indian Meridian, containing 100 acres more or less according to the United States Government survey thereof, together with all the privileges, appurtenances and improvements thereupon situated, appertaining and thereunto belonging.

To have and to hold the same unto the said Ben F. Johnson, his heirs and assigns forever. And I, the said C. B. Campbell, for myself, my heirs, executors and administrators, do covenant with the said Ben F. Johnson, his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises, that they are free and clear from all encumbrances, assessments, judgments, taxes and liens; that I have a good right to sell and convey the same as herein done, that I will and my heirs, executors and administrators, shall forever warrant and defend the same to the quiet enjoyment of said Ben F. Johnson and unto his heirs and assigns against all lawful claims and demands of all persons.

And, I, Maggie Campbell, wife of C. B. Campbell, the grantor herein do hereby join in this conveyance and for the consideration aforesaid, convey and renounce all right of homestead in and to said property and for the consideration aforesaid, do hereby release and relenquish unto the said Ben F. Johnson, heirs and assigns all my right, claim and possibility of dower and homestead in and to said property.

In testimony whereof, we hereunto set out hands this — day of April, 1906.

C. B. CAMPBELL.
MAGGIE CAMPBELL.

Acknowledgment.

INDIAN TERRITORY,
Southern District, ss:

On this — day of April, 1906, before me, Dan Roysden, a Notary Public within and for the southern district of the Indian Territory duly commissioned and acting, appeared in person C. B. Campbell, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor and stated that he had executed the same for the consideration and purposes therein mentioned and set forth and I do so certify.

And I further certify that on the same day voluntarily appeared before me, Maggie Campbell, wife of said C. B. Campbell, to me well known to be the person whose name appears upon the within and foregoing deed and in the absence of her said husband stated and declared that she had of her own free will executed said deed and had signed the relinquishment of dower and homestead as set forth without compulsion or undue influence of her said husband and I do so certify.

In testimony whereof, I have hereunto set my hand and seal of office as such notary public in the district and territory aforesaid, on this 6th day of April, 1906.

[SEAL.] DAN ROYSDEN,
Notary Public.

My commission expires November 11th, 1909.

Filed at Chickasha for record Apr. 27, '06. Book 17, Page 399.

J. W. SPEAKE,
Dep. Cl'k and ex. — Rec. Dist. 19, *Ind. Ter.*

22 *Warranty Deed.*

This indenture, made this 13th day of March, A. D. 1903, between C. R. Campbell, and Maggie Campbell, (husband and wife) of Minco, Indian Territory of the first part and Ben F. Johnson of the second part:

Witnesseth, that said parties of the first part in consideration of the sum of Two Thousand Dollars ($2,000.00) the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell and convey unto said party of the second part, his heirs or assigns, all of the following described real estate situated in the Indian Territory, Southern District, to-wit:

Not No. Five (5) Section thirty (30) Township Nine (9) North of Range Seven (7) West, I. M. Also the northeast ¼ of the northeast ¼ and the west ½ of the southeast ¼ of the northeast ¼ of section twenty-five (25) Township Nine (9) North range eight (8) west of the I. M. containing one hundred (100) acres more or less according to the official survey thereof.

To have and to hold the same together with all and singular the

tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining forever and said C. B. Campbell and Maggie Campbell, for themselves, their heirs, administrators or executors, does hereby covenant, promise and agree with said party of the second part that at the delivery of these presents, they are lawfully seized in their own right of an absolute and indefi-siable estate of inheritance in fee simple of and in all and singular the above granted and described premises with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former grants or other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever and that they will forever warrant and defend the same unto the said party of the second part, his heirs and assigns against said parties of the first part, their heirs and all and every person or persons whomsoever lawfully claiming or to claim the same.

In witness whereof, the said parties, of the first part have hereunto set their hands the day and year first above written.

C. B. CAMPBELL.
MAGGIE CAMPBELL.

Acknowledgment.

INDIAN TERRITORY,
Southern District, ss:

Be it remembered, that on this day came before the undersigned a Notary Public within and for the territory and district aforesaid, duly commissioned and acting, C. B. Campbell, to me well known as the grantor in the foregoing deed and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me, the said Maggie Campbell, wife of said C. B. Campbell, to me well known and in the absence of her said husband declared that she had of her own free will executed said instrument, signed and sealed the relenquishment of dower and of homestead in the foregoing deed for the consideration and purposes therein mentioned and set forth without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public on this 13th day of March, 1906.

[SEAL.]

DAN ROYSDEN,
Notary Public.

My commission expires on the 11th day of November, 1908.

Filed at Chickasha, for record Mar. 13, 1906, 4 P. M.

J. W. SPEAKE,
Deputy Clerk and Ex-officio Recorder,
District No. 19, Ind. Ter.

$1.25.
Book 17, page 569.

23 *Warranty Deed.*

Know all men by these presents, That we, Selin Taylor, and Ellen Taylor, for and in consideration of Five Hundred & Seventy Five ($575.00) Dollars paid and to be paid by C. B. Campbell, as follows: to-wit: Thirty Five and No. 100 Dollars ($35.00) cash in hand, the receipt of which is hereby acknowledged and Five Hundred & Forty & No/100 Dollars ($540.00) to be paid when certificate of removal of restrictions is received, bearing interest from date until paid at the rate of 8 per cent per annum, do hereby grant, bargain and sell unto the said C. B. Campbell and unto his heirs and assigns forever, the following lands lying in the Chickasha Nation, Indian Territory, to-wit: Lot 5 Section 30 T. 9 N. R. 7 W.; also N. E. 4 of N. E. 4 & W. 2. of S. E. 4 of N. E. 4 Section #25 t. 9 n. r. 8 w.

To have and to hold the same unto the said C. B. Campbell, and unto his heirs and assigns forever with all appurtenances thereunto belonging and we hereby covenant with the said C. B. Campbell, that we will forever warrant and defend the title to said lands against all claims whatever, and that said lands are free from liens and encumberances, it being herein expressly understood that a lien is hereby retained upon said lot or parcel of land to secure the payment of residue of the purchase money hereinbefore mentioned. And, I Ellen Taylor, wife of the said Selin Taylor, for and in consideration of the said sum of money, do hereby release and relinquish unto said C. B. Campbell, all my right of dower and homestead in and to the said lands.

Witness out hands and seals on this 16th day of Feb'y 1906

SELIN TAYLOR. (His x mark.)
ELLEN TAYLOR. (Her z mark.)

E. H. GARDNER.
WILBOR WILKEN.

Acknowledgment.

INDIAN TERRITORY,
Central District, County of —, ss:

Be it remembered that on this day came before me, the undersigned, a notary public, within and for the county and territory aforesaid, duly commissioned and acting, Selin Taylor, to me well known as the grantor in the foregoing deed and stated that he had executed the same for the consideration and purposes therein mantioned and set forth. And on the same day also valuntarily appeared before me, the said Ellen Taylor, wife of the said Selin Taylor, to me well known and in the absence of her said husband, declared that she had of her own free will executed said deed and signed and sealed the relenquishment of dower and homestead in the said deed for the consideration and purposes therein contained and set forth without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public on this 16th day of February, 1906.

[SEAL.] ELBERT F. HAINS,
Notary Public.

Comm. Exp. Aug. 1st, 1907.

Filed at Chickasha for record Feb. 19, 1906, 11 A. M. J. W. Speake, Deputy Clerk and Exof-icio recorder district No. 19 Ind. Ter. $1.25.
Book 16, Page 286.

24 *Warranty Deed.*

Know all men by these presents, That, we, (Selin) C. Taylor and Ellen Taylor, his wife, for and in consideration of the sum of Five Hundred and Seventy five dollars ($575.00) paid and to be paid by C. B. Campbell as follows, to-wit: Twenty Five ($25.00) Dollars cash in hand, the receipt of which is hereby acknowledged and Five Hundred Fifty Dollars ($550.00) to be paid when restrictions are removed and certificate of same received bearing interest from date until paid at the rate of 8 per cent per annum, do hereby grant, bargain and sell unto the said C. B. Campbell and unto his heirs and assigns forever, the following lands lying in the Chickasaw Nation, Indian Territory to-wit: All of the surplus allotment of said (C) Selin Taylor, described as follows: Not #5 (five) Section #30, Township 9 M. R. 7 W., also N. E. 4 of N. E. 4 and W. 2 of S. E. 4 of N. E. 4 Sec. #25 Town. 9 N. R. 8 W.

To have and to hold the same unto said C. B. Campbell and unto his heirs and assigns forever with all appurtenances thereunto belonging and we hereby covenant with the said C. B. Campbell that we will forever warrant and defend the title to said lands against all claims whatever, and that said lands are free from all liens and encumbrances, it being herein expressly understood that a lien is hereby retained upon said lot or parcel of land to secure the payment of residue of the purchase money hereinbefore mentioned. And, I, Ellen Taylor wife of the said Selin Taylor, for and in consideration of the said sum of money, do hereby release and relinquish unto said C. B. Campbell, all my right, of dower and homestead in and to the said lands.

Witness out hands and seals on this 6 day of Feb. 1906.

(C) SELIN TAYLOR.
ELLEN (Her x mark) TAYLOR.

H. R. GARDNER.
WILBON WILKEN.

Acknowledgment.

INDIAN TERRITORY,
Central District, County of —, ss:

Be it remembered, that on this — day came before me, the undersigned notary public within and for the county and Territory, afore-

said, duly commissioned and acting within and for the territory and county aforesaid, Selin (or C) Taylor, to me well known as grantor in the foregoing deed and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me, the said Ellen Taylor, wife of said Selin Taylor, to me well known and in the absence of her said husband, declared that she had of her own free will, executed said deed and signed and sealed the relenquishment of dower and homestead in the said deed for the consideration and purposes therein contained and set forth without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public on this 6th day of February, 1906.

ELBERT E. RAINS,
Notary Public.

Notary's seal attached.
My commission expires Aug. 1st, 1907.

Filed at Chickasha for record *D*eb. 16, 1906, 1 P. M. J. W. Speake, Deputy Clerk and Ex-Of-icio Recorder District No. 19, Ind. Ter. $1.25.
Book 16, page 228.

25 EXHIBIT "E."

Choctaw and Chickasaw Nations.

Record 54, Page 71.

Allotment Patent to Selin Taylor.

Filed May 10, 1905.

Roll No. 2709.

Allotment patent Number 1232 Choctaw by Blood.
Date of Certificate May 23, 1903.

The Choctaw and Chickasaw Nations.

To all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 1, 1902 (32 Stat. 641) and ratified by the citizens of the Choctaw and Chickasaw Nations September 25, 1902, it was provided that there should be allotted by the com-ission to the five civilized tribes, to each citizen of the Choctaw and Chickasaw Nations land equal in value to three hundred and twenty acres of the averange allotable lands of the Choctaw and Chickasaw Nations; and

Whereas, it was provided by said act of Congress that each member of said tribe shall, at the time of the selection of his allotment,

designate, or have designated for him, from his allotment, land equal in value to One Hundred and Sixty acres of the average allotable lands of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue, and

Whereas, the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Selin Taylor a citizen of the Choctaw Nation, as an allotment, exclusive of the land equal in value to one hundred and sixty acres of the average allotable lands of the Choctaw and Chickasaw Nations selected as aforesaid.

Now, Therefore, We, the undersigned, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw nation, by virtue of the power and authority vested in us by the -wenty ninth section of the act of Congress of the United States, approved June 28, 1898 (30 Stat. 495), have granted and conveyed unto the said Selin Taylor all the right, title and interest of the Choctaw and Chickasaw Nations, and of all other citizens of said nations, in and to the following described lands, viz: Lot Five (5) of Section Thirty (30) Township Nine (9) North and Range Seven (7) West and the North east quarter of the North east quarter and the West half of the South east quarter of the north east quarter of section twenty five (25) Township Nine (9) North and Range Eight (8) West, (Chickasaw Nation) of the Indian base and Meridian in Indian Territory, containing One Hundred and 19/100 (100.19) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the provisions of the act of Congress approved July 1, 1902 (32 Stat. 641).

In witness whereof, We, the Principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation have hereunto set our hands and caused the great seal of our respective Nations to be affixed at the dates hereinafter shown.

Dated November 22, 1904.

[SEAL.] GREEN McCURTAIN,
Principal Chief of the Choctaw Nation.

Dated December 9, 1904

[SEAL.] DOUGLASS H. JOHNSON,
Governor of the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR.

Approved Aug. 24, 1905.

THOMAS RYAN,
Acting Secretary,
By OLIVER A. PHELPS, *Clerk.*

Certified copy.

Filed *d*or record this 31 day of Aug. 1905 at 2 o'clock P. M. and recorded in Book 2, Page 384.

26 STATE OF OKLAHOMA,
County of Grady, ss:

In the District Court within and for the 15th Judicial District of the State of Oklahoma.

BEN F. JOHNSON, Plaintiff,
vs.
ELI P. WILLIAMS, CHARLES H. WILLIAMS, and ELMER WILLIAMS.

Defendants' Answer to Plaintiff's Amended Petition to Quiet Title.

Comes now the defendants in the above entitled action, and for their answer to the Plaintiff's Amended Petition to quiet title denies all and singular, each and every allegation in plaintiff's amended petition, except such as is in this answer admitted.

Defendants admit that they are non-residents of the State of Oklahoma, and admit that the land in controversy in this action is located in Grady County, Oklahoma, and is described as follows: Lot Number Five, in Section 30, Township 9, North, Range 7 West containing 40.19 acres of land, more or less.

Defendants admit that the plaintiff is in possession of said land, but allege that said possession is unlawful, and that the plaintiff has no title to said land.

Defendants admit that said land was allotted to one Selin Taylor; that the said Selin Taylor was a member of the Choctaw Tribe of Indians; that on November 22nd, 1904, there was issued to him a Patent covering the above described land, signed by Green McCurtain, principal chief of the Choctaw Nation, and Douglas H. Johnson, Governor of the Chickasaw Nation, and that said Patent was approved by Thomas Ryan, acting Secretary of the Interior
27 in behalf of the United States; that at the time of the allotment of said land the same was under the law inalienable.

Defendants allege that on May 23, 1903, Selin Taylor allotted said land, and received his allotment certificate and Patent therefor under an Act of Congress approved July 1, 1902, known as An Act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians, and for other purposes, hereinafter called Agreement; that said agreement was ratified by Congress, and by a majority of the legal voters of the Choctaw and Chickasaw Tribes, in the manner required in said Agreement, and said Agreement is for a valuable and sufficient consideration, and is a binding contract upon the United States and upon the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws, and Selin Taylor, and is in full force and effect.

Defendants allege that Selin Taylor is not a ward of the United States, and was not when he allotted said land.

By an Act of Congress approved March 3, 1901, (31 Stat. 1447) Selin Taylor was made a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens.

A copy of said Act of Congress is hereto attached, marked "Exhibit H", and made a part hereof.

Defendants allege that the Choctaw and Chickasaw Nations, and not the United States, are the Grantors in the Patent to Selin Taylor for said land, a copy of said Patent is hereto attached, and marked "Exhibit E", and made a part hereof; that said grantors, the Choctaw and Chickasaw Nations, imposed restrictions in said
28 patent against the alien-tion of said land for the protection and benefit of Selin Taylor, and said grantors have not in any way consented to the removal of the restriction against the alien-tion of said land contained in said patent; that said restrictions are in full force and effect and wholly disregarding said restrictions, so imposed in said patent, C. B. Campbell and James E. Whitehead induced Selin Taylor to execute to them, to his great property loss and damage, the deeds complained of herein, and said deeds so executed by Selin Taylor, in violation of the restrictions upon alien'-tion contained in his patent are illegal and void.

That said Patent was issued by the authority of Section Twenty-nine of an Act of Congress, approved June 28th, 1898 (30 Stat., 495). A copy of said Section Twenty-nine, so far as it relates to allottees' patents, is hereto attached, and marked "Exhibit G," and made a part hereof.

That said Patent contained the following clause: "Subject, however, to the provisions of the Act of Congress, approved July 1, 1902 (32 Stat., 641)," and on account of said clause in said patent the entire Act of Congress became a part of said patent, and a copy of Section- 15-16-68 and 73 of said Act is hereto attached and marked "Exhibit F," and made a part hereof.

That Selin Taylor and the defendant claim title to said land under said Agreement, and also under the Patent to said land issued by the Choctaw and Chickasaw Nations to Selin Taylor; that said agreement, and also said Patent imposed restrictions upon the alienation of all lands allotted to members of said tribes, for the
29 protection and benefit of said members, and that Selin Taylor was a full blood Choctaw Indian, and a member of the Choctaw tribe of Indians, and did not understand the English language, and was wholly ignorant of land values, and was in need of, and entitled to the protection and benefit of said restrictions so imposed. Conditioned as Selin Taylor was on the date of his Deeds complained of herein, to C. B. Campbell and James E. Whitehead; said protection was of great value to him, and was to him property, as much as the land itself.

Defendants admit that on the 16th day of February, 1906, Selin Taylor executed a Deed to C. B. Campbell, for said land, and that on the 15th day of November, 1906, Selin Taylor and Ellen Taylor, his wife, executed a deed to James E. Whitehead, for said land.

Defendants allege that the plaintiff's title to, and right of possession to said land, rests upon said deeds, and that said deeds were executed under an unconstitutional Act of Congress, approved April 21-1904 (33 Stat. 204), which attempted to remove the restrictions upon the alienation of said land, to the great property loss and dam-

age of Selin Taylor and the defendants, contrary to and in open violation of the restrictions against alienation in the Act of Congress, approved July 1-1902 (32 Stat. 641), called Agreement, under which Selin Taylor allotted said land, and acquired the title thereto, and also contrary to, and in open violation of, the restrictions against alienation in the patent from the Choctaw and Chickasaw Nations to Selin Taylor for said land. On account of said last mentioned Act of Congress, and on account of the restrictions contained in said patent, said land was not alienable when Selin Taylor exe-
30 cuted said Deeds, and said deeds are illegal and void, and conveyed no title to said lands;

That the plaintiff, Ben F. Johnson, under a pretended title rested upon said illegal deeds, and contrary to, and in open violation of, the restrictions against alienation contained in the Patent to Selin Taylor for said land, and of the restrictions contained in the Agreement under which Selin Taylor allotted said land, has taken possession of said land and claims it as his own, and refuses to surrender possession or attorn for the rents thereof, which is an impeachment and impairment of the title to said land of Selin Taylor derived from the United States and the Choctaw and Chickasaw Nations, and also of the defendant's interest in said land and rents thereof derived from Selin Taylor, to the great property loss and damage of Selin Taylor and the defendants and in violation of the Constitution and laws of the United States.

That on the 9th day of February, 1906, the United States Indian Agent issued to Selin Taylor a Certificate No. 2458, for the purpose of removing the disabilities of the said Selin Taylor on the alienation of said Lot 5, in Section 30, being the land herein described. A copy of said Certificate is hereto attached and marked "Exhibit D," and made a part hereof.

The real question at issue in this action is; is the act of Congress, approved April 21-1904 (33 Stat. 204) under which Certificate No. 2458 was issued, constitutional and a binding law upon Selin Taylor and the land described herein. If it is, the defendants have no rights in this action, and should not recover, but if said Act of Congress is invalid, unconstitutional and void, or is not binding upon Selin Taylor and the land described herein, the defendants should recover in this action.

31 Defendants allege that said Certificate No. 2458 is issued under the authority of an Act of Congress, approved April 21-1904 (33 Stat., 204), that the object of said Act of Congress, and said Certificate No. 2458 is to remove the restrictions upon the alienation of the lands described herein; that both said Act of Congress and said Certificate No. 2458, impairs the obligation of a contract, of a binding agreement upon the United States, and upon the Choctaw and the Chickasaw Nations, and all Choctaws and Chickasaws, and Selin Taylor, and is an impeachment and impairment of the title to said land of Selin Taylor, derived from the United States and the Choctaw and Chickasaw Nations, and is also an impeachment and impairment of the interest of the defendants in said lands and the rents thereof derived from Selin Taylor, and is repugnant to

an Act of Congress, approved July 1-1902 (32 Stat., 641) under which Selin Taylor allotted said land, and is repugnant to the Constitution of the United States, and to the clause in the fifth amendment thereof, which provides that no person shall be deprived of property without due process of law, and is unconstitutional, illegal and void.

That this action arises under, and that its determination will necessarily involve and require the construction of the foregoing acts of Congress.

Defendants admit that they claim an interest in said land and rents thereof by virtue of a certain instrument executed by Selin Taylor on the 11th day of March, 1907, and said instrument is now of record in Grady County, Oklahoma.

Defendants allege that said instrument is a binding con-
32 tract upon the parties thereto, and said instrument is in full force and effect; that under said instrument said defendants are entitled to recover said land, and the rents thereof in this action. That a copy of said instrument is hereto attached, marked "Exhibit C" and made a part hereof.

That said land is worth One Thousand Dollars ($1,000.00), and a reasonable rental value thereof is Seventy five Dollars ($75.00), for each year, and that the defendants have a right, title, interest or estate in the land described herein, and the rents thereof, and are entitled to the immediate possession of said land and the rents thereof, and that the plaintiff, Ben F. Johnson, is in the unlawful possession of said land, and claiming the same as his own, and refuses to surrender possession to the defendants or attorn to them for the rents and profit arising from said land.

Wherefore, the defendants pray for a judgment cancelling and annulling the Deed executed by Selin Taylor to C. B. Campbell, and the Deed from C. B. Campbell and Maggie Campbell, his wife, to Ben F. Johnson, and also the Deed from Selin Taylor and Ellen Taylor, his wife, to James E. Whitehead, and the deed from James E. Whitehead to J. E. McNeill, and the Deed from J. E. McNeill to Ben F. Johnson; all of said deeds are more fully described in plaintiff's amended petition, and also for a judgment cancelling and annulling all the interest of Ben F. Johnson, the plaintiff in this action, to the land described herein, and the rents thereof, and the improvements thereon, and all interest in said land or the rents thereof claimed by any person holding under him, and for a judg-
ment for the possession of said land, and for the rents of
33 said land in the sum of Seventy five Dollars ($75.00) for each and every year since January 1, 1908, and for costs in this action, and such further orders be made in the premises as will fully protect the rights of the defendants herein.

(Signed) FRANK O. JOHNSON,
Attorney for Defendants.

Eli P. Williams, of lawful age, on his oath states that he is one of the defendants in this action; that he has read the above and

foregoing answer, and that the matters and things set forth are true and correct.

(Signed) ELI P. WILLIAMS.

Subscribed and sworn to before me, this 1st day of December, 1909.

[SEAL.] (Signed) CHARLES A. RISHL,
Notary Public.

My commission expires Jan. 3rd, 1910.

34 EXHIBIT "C."

Power of Attorney.

SECTION 1. Know all men by these presents that I, Selin Taylor post office address Ormine I. T., represent that I am --- years old, in consideration of one dollar to me in hand paid, the receipt of same is hereby acknowledged, and other valuable and sufficient considerations, I do by these presents appoint, constitute and nominate Eli P. Williams, Elmer Williams and Charles H. Williams, my sole and only true and lawful agents and attorneys in fact, hereafter called my agents, they to act either jointly or severally, with full, sole and absolute power, to do any and all acts, at any time that I could lawfully do myself—had I not executed this Power of Attorney—which in any way relate to all the lands in my allotment other than homestead, hereafter called said lands, and the possession, control, rents, income and profits thereof, located in Indian Territory, to-wit:

Lot 5 Section 30 Township 19 N. Range 7 W. (40 19/100 acres) and other lands.

Not being familiar with the description of said lands my agents are hereby authorized, at their option, to attach to this Power of Attorney in the blank space above, a description of all or any part of said lands, said description to be marked "Attached Description" and when so attached shall have the same legal force and effect as if said description of said lands in said Attached Description had been written in this Power of Attorney before it was executed, and my agents are hereby authorized to have said attached description of said lands recorded with this Power of Attorney.

SECTION 2. I hereby assign, transfer, and deliver to my
35 agents all of my rights to the possession of said lands and improvements thereon and I agree within two years from this date to put my agents in actual and absolute possession thereof and my agents agree when put in possession as aforesaid, to advance to me on demand fifty dollars on this Power of Attorney and should I from any cause fail to furnish possession as above provided my agents are hereby authorized to acquire possession of said lands and improvements at any time during the life of this Power of Attorney, and to do any acts necessary in their opinion to be done to acquire said possession, and when in possession agree to rent, manage and look after said lands and improvements.

My agents have full, sole and absolute authority to collect and receive all moneys, rents and income of any kind now due or that hereafter become due from said lands, and my agents agree during my life to account to me and after my death to account to my heirs, executors and administrators for all moneys, rents and income received by them on account of my interest in said lands, less eight per cent on the amount actually received by them after deducting all expenses. Said eight per cent I allow my agents in full payment for their services for managing, renting or disposing of my interest in said lands. And I further agree not to assign or transfer all or any part of said moneys, rents and income.

SECTION 3. I hereby sell, convey, transfer and deliver to my agents an absolute interest in fee simple in all of the rents from said lands now due and that hereafter become due before the expiration of this Power of Attorney and in all of the improvements on said lands and agree that this Power of Attorney is coupled with an interest in all of said rents and improvements.

36 SECTION 4. I hereby sell, convey and transfer to my agents an absolute interest in fee simple in all and in any part of said lands that I can lawfully sell or alienate.

SECTION 5. My agents are hereby given full, sole and absolute power (at any date when I could lawfully sell—if this Power of Attorney had not been executed—all or any part of said lands whether that date is the present date or some future date) to sell in whole or in part on such terms and conditions as they may see fit for cash or on time all of my interest in said lands, and to convey and transfer same by deed in fee simple, in whole or in part and to receive the considerations for such sales and to do any other acts that in any way relate to said sales.

SECTION 6. This power of attorney shall continue in full force and effect until the thirty-first day of December, nineteen hundred thirty-nine, and shall expire on said date and I agree that this Power of Attorney shall not be terminated by my death but shall continue in full force and effect until the last mentioned date, and my agents have full, sole and absolute power in the event of my death to do any and all acts in their own name or names authorized to be done by this Power of Attorney, and I further agree for myself, my heirs, executors and administrators that this power of attorney shall not be revoked before the last mentioned date.

SECTION 7. Should any one or two of my agents die, this shall in no way effect the legal force and effect of this Power of Attorney, the survivor or survivors shall have the same full, sole and absolute power to act as if death had not accur-ed.

SECTION 8. My agents are authorized and have full, sole and absolute power to bring or defend, either in their own name or names or in my name, at their option, and dismiss any law suit that in any way relates to said lands and improvements, the possession, rents or profits thereof and to prosecute said suits until finally adjudicated by the court of last resort.

SECTION 9. It is hereby stipulated and agreed that the considerations named in Section 1 and Section 2 of this Power of Attor-

ney are valuable and sufficient considerations and make all of the sections and parts of sections of this Power of Attorney binding obligations upon me and my agents, and upon said lands and improvements, income and profits thereof.

SECTION 10. Should any one or more of the sections herein or should any part of any section or sections herein from any cause be declared void or inoperative, this fact shall in no way affect the legal force of the other sections and parts of sections of this Power of Attorney.

SECTION 11. I hereby ratify and confirm all the acts of my agent named herein and I hereby revoke and cancel all other
37 Powers of Attorney and agencies and the parties named herein are my sole and only authorized and acting agents and attorneys in fact.

This Power of Attorney contains the full agreement between the parties hereto and shall not be changed or altered unless the same is in writing and signed by all the parties, and no person has any authority to make any promise, representation or agreement which in any way changes or alters the terms and provisions of this Power of Attorney.

Dated this 11 day of March 1907.

(Signed) SELIN TAYLOR.
ELI P. WILLIAMS.
ELMER WILLIAMS.
CHARLES H. WILLIAMS.

Witnesses to mark and Subscribing and Attesting Witnesses.
A. H. REED.
M. D. REED.

UNITED STATES OF AMERICA,
Indian Territory, Central Judicial District, ss:

Be it remembered, that on this the 9th day of March 1907, before me, a notary public in and for the district and territory aforesaid, personally appeared A. H. Reed, one of the subscribing witnesses to the foregoing instrument, to me personally well known who, being by me first duly sworn, on his oath states that he saw Selin Taylor grantor in said instrument subscribe said instrument on the day of its date, for the uses, purposes and considerations therein expressed; and that he and M. D. Reed, the other subscribing witness, subscribed the same as attesting witness- at the request of said grantor.

In Testimony Whereof, I have hereunto set my hand and affixed my seal as such notary public, at the district and Territory aforesaid, this 19th day of March, 1907.

[SEAL.] H. R. COOKE,
Notary Public.

My commission expires 4-14-07.

Filed for record at Chickasha in the S. D. of the I. T. Sept. 28th 1907. And recorded on book 30 page 603.

J. W. SPEAKE, *Clerk.*

38 EXHIBIT "D."

DEPARTMENT OF THE INTERIOR.

UNITED STATES INDIAN SERVICE, UNION AGENCY.

MUSKOGEE, INDIAN TERRITORY.
January the 11th, 1906.

In the Matter of the Application of SELIN TAYLOR, a Citizen by Blood of the Choctaw Nation, for the Removal of the Restrictions upon the Sale of His Allotment, Except His Homestead.

Number 2458. Roll No. 2709.

In accordance with the regulations approved by *me* Secretary of the Interior, May 12, 1904, in conformity to the provisions of the act of Congress approved April 21, 1904, (33 States. 204), I have made a full investigation in connection with the application of Selin Taylor, a citizen by blood of the Choctaw Nation, for the removal of the restrictions upon the alienation of his allotment (except his homestead), described as follows: Lot 5 of Section 30, township 9 North range seven west of the Indian base meridian and am, as the results of that investigation, satisfied that the removal of the restrictions as to the sale of the above described land will be for the best interest of the allottee, and I so recommend.

The approval of this certificate does not in any manner determine the right of the allottee to any particular tract of land.

DAN H. KELSEY,
United States Indian Agent.

DEPARTMENT OF THE INTERIOR.
WASHINGTON, D. C., February 9, 1906.

Approved:
THOS. RYAN,
First Assistant Secretary of the Interior. [L. R. S.]

Filed for record on the 2 day of March, 1906, at 10 o'clock A. M.

39 EXHIBIT "E."

Allotment Patent.

NOTE.—This allotment patent appears at Page 19 and also at page 34 of this case-made and therefore is not copied at this place.

40 EXHIBIT "F."

15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this act, nor shall said land be sold except as herein provided.

16. All lands allotted to the members of said tribes, except such lands as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One fourth in acreage in one year, one fourth in acreage in three years, and the balance in five years, in each case from date of patent. Provided, that such lands shall not be alienated by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw Tribal governments for less than its appraised value.

68. No act of Congress or treaty provisions, nor any provision of the Atoka Agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw Nations.

"73. This agreement shall be binding upon the United States and upon the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws when ratified by Congress and by a majority of the whole number of the votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following: The Principal Chief of the Choctaw and the Governor of the Chickasaw Nation shall, within One Hundred and twenty days after the ratification of this agreement by Congress, make public proclamation that the same shall be voted upon at any special election to be held for that purpose within ninety days thereafter, on a certain day therein named; and all male citizens of each of said tribes, qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement be ratified by said tribes as aforesaid, the date upon which said election is held shall be deemed to be the date of final ratification. This said agreement was duly ratified as provided in Section seventy three above and was also duly ratified by Congress as follows:

"Be it enacted by the senate and house of representatives of the United States of America in Congress assembled that the following agreement made by the com-ission to the Five Civilized Tribes with the com-issions representing the Choctaw and Chickasaw tribes of Indians on the twenty first day of March, nineteen hundred and two, and the same is hereby ratified and confirmed, to-wit:

41 EXHIBIT "G."

Member's Title to Land.

That as soon as practicable, after the completion of said allotment, the Principal Chief of the Choctaw Nation and the governor of the Chickasaw Nation shall jointly execute under their hands and the seals of the respective nations, and deliver to each of the said allottees patents conveying to him all the title, right and interest of the Choctaw and Chickasaws in and to the land which shall have been allotted to him in conformity with the requirements of this agreement, excepting all coal and asphalt in or under said land. Said Patent shall be framed in accordance with the provisions of this agreement, and shall embrace the land allotted to such patentee and

no other land, and the acceptance of his patents by such allottee shall be operative as an assent on his part to the allotment and conveyance and of the lands of the Choctaws and Chickasaws in accordance with the provisions of this agreement, and as a relinquishment of all his right, title and interest in and to any and all parts thereof, except the land embraced in said patents, except also his interest in the proceeds of all lands, coal and asphalt herein excepted from allotment. Above is a part of section 29 of an Act of Congress approved June 28th 1898. (30 Stat. 495.)

42 EXHIBIT "H."

That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the Territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, and every Indian in Indian Territory is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians, within the territorial limit of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property. (24 Stat. L. 390.)

Act of March 3, 1901. (31 Stat. L. 1447), Ch. 868.

Said Answer is endorsed as follows, to-wit: Defendants' Answer to plaintiff's Amended Petition to Quiet Title. Ben F. Johnson vs. Eli P. Williams et al. Filed at Chickasha, Okla. Dec. 4, 1909. J. R. Callaham, District Clerk, Grady County, Okla.

43 And be it remembered, that thereafter, and to-wit: on the 7th day of December, 1909, the plaintiff herein by his attorney filed a demurrer in said cause, which said demurer is in words and figures as follows, to-wit:

In District Court Within and for the Fifteenth Judicial District for the State of Oklahoma.

BEN F. JOHNSON, Plaintiff,
vs.
ELI P. WILLIAMS et al., Defendants.

Demurrer.

Comes now the plaintiff herein and files this his demurrer to the Amended Answer of the defendant, and for such demurrer states that such Answer does not state facts sufficient to constitute a defense to the amended petition of the plaintiff herein filed.

Wherefore, plaintiff asks judgment of the court.

BOND & MELTON,
Attorneys for Plaintiff.

Said demurrer is endorsed as follows: Ben F. Johnson vs. Eli P. Williams et al. Demurrer. Filed at Chickasha, Oklahoma, Dec. 7 1909. J. R. Callham, clerk district court Grady county, Okla.

44 And be it remembered that on the said 16th day of December, A. D. 1909, the court rendered judgment in the above and foregoing cause in favor of the plaintiff, which said judgment is in words and figures as follows, to-wit:

STATE OF OKLAHOMA,
County of Grady, ss:

In the District Court.

BEN F. JOHNSON, Plaintiff,
vs.
ELI P. WILLIAMS, ELMER WILLIAMS, and CHARLES H. WILLIAMS, Defendants.

Judgment.

Now on this the 16th day of December, 1909, the same being one of the days of the regular December, 1909, term of this court, came on for hearing the Demurrer of the plaintiff to the answer of the defendants herein to the Amended Petition of Plaintiff. Plaintiff appearing in person and by his attorneys, Bond & Melton, and the defendants appearing by Eli P. Williams, one of the defendants herein, this cause was submitted to the court upon the demurrer of the plaintiff herein filed, and the court after having heard the argument of counsel and having been fully advised in the premises, and after having considered the admissions set forth in the Answer of the defendants, and reiterated in open court, is of the opinion that the

Demurrer of the plaintiff to the Answer of the Defendants should be and the same is hereby sustained; thereupon, the defendant- having announced in open court that they sought to stand upon said answer, and in open court duly excepted to the ruling of the court in sustaining said demurrer, and having refused to plead further in said action, and the plaintiff having thereupon asked for judgment on his Amended Petition herein filed, the court is of the opinion
45 that the plaintiff is entitled to the relief prayed for in said Amended Petition.

Defendants afterwards filed Motion for New Trial herein, which said Motion was overruled, to which the defendants duly excepted.

Now Therefore, it is hereby considered, ordered, adjudged and decreed by this court that the Power of Attorney heretofore given by Selin Taylor to Eli P. Williams, Elmer Williams and Charles H. Williams, defendants herein, in so far as the same effects said Lot Number Five of Section Thirty, in Township Nine North, Range 7 West, in Grady County, Oklahoma, which said Power of Attorney is recorded in the office of the Register of Deeds of Grady County, Oklahoma, in miscellaneous records Book # 30 at page 603, be and the same is hereby cancelled and vacated and the title to said property above described is quieted in said plaintiff, Ben F. Johnson, and the defendants herein Eli P. Williams, Elmer Williams and Charles H. Williams, are forever barred from claiming any right, title and interest in and to said lands created by reason of the execution of said Power of Attorney aforesaid. It is further ordered that the plaintiff herein recover of and from the defendants the costs of this action, taxed at $— *Dollars.* To all of which the defendants except.

Defendants ask sixty days in which to prepare and serve a case-made to the Supreme Court of the State of Oklahoma, twenty days in which to suggest amendments, and ten days from that date in which to settle the same, which is granted by the court.

FRANK M. BAILEY,
Judge of the District Court.

Endorsed as follows: No. 2159. Ben F. Johnson vs. Eli P. Williams et al. Judgment. Filed in Open Court Dec. 16, 1909. J. R. Callham, Clerk.

46 In the Supreme Court of the State of Oklahoma.

1568.

ELI P. WILLIAMS, ELMER WILLIAMS, and CHARLES H. WILLIAMS, Plaintiffs in Error,
vs.
BEN F. JOHNSON, Defendant in Error.

Petition in Error.

Said Eli P. Williams, Elmer Williams and Charles H. Williams, Plaintiffs in Error, alleges and shows to the court that on the 16th

day of December 1909, that said Ben F. Johnson, defendant in error obtained a judgment in the district court of Oklahoma, within and for the county of Grady, by the consideration of said court against said plaintiffs in error in a certain action then pending in said district court, wherein said plaintiffs in error were defendants and said defendant in error was plaintiff.

Case-made pages 51-52.

The original case-made of the judgment and pleadings and proceedings, had in said action in said district court is hereto attached and made a part of this petition in error.

Said Eli P. Williams, Elmer Williams, and Charles H. Williams, plaintiffs in error alleges that there is error in said judgment and proceedings in this, to-wit:

1. That the said court erred in sustaining the demurrer of the defendant in error to the answer of the plaintiffs in error to the Amended Petition to Quiet Title of the defendant in error.

2. That the said court erred in overruling the motion of the plaintiffs in error for a new trial.

47 3. That the said court erred in its opinion that the defendant in error is entitled to the relief prayed for in said Amended Petition.

4. That the said court erred in rendering judgment in favor of the defendant in error on the facts alleged and admitted in the pleadings.

5. That the said court erred in not rendering a judgment for the possession of said land and the rents thereof, in favor of the plaintiffs in error, on the facts alleged and admitted in the pleadings.

6. That the said court erred in not rendering a judgment in favor of the plaintiffs in error for the possession of said land and rents thereof on the facts alleged in the answer of the plaintiffs in error to the Amended Petition to Quiet Title of defendant in error.

7. That the said court erred in rendering a judgment cancelling and vacating the Power of Attorney given by Selin Taylor to Eli P. Williams, Elmer Williams and Charles H. Williams, and in quieting the title to said land in Ben F. Johnson, said judgment fully appears in case-made, pages 51-52.

8. That the said court erred in deciding against the title of the plaintiffs in error to the land in controversy in this suit and their right to the possession thereof, when the title to said land and the right to the possession thereof is specially set up and claimed by the plaintiffs in error under the statute of the United States, approved July 1, 1902 (32 Stat. 641).

9. That the said court erred in holding that the restrictions against the alienation of said land contained in the patent to

48 Selin Taylor for said land (executed by the Choctaw and Chickasaw Nations and approved by the Department of Interior) was null and void and was not binding upon Selin Taylor, or upon said land.

10. That the said court erred in not holding that Congress had no power to pass the Act of Congress approved April 21, 1904, (33

Stat., 204) which provided for the removal of the restrictions against the alienation of said land and that said Act of Congress was repugnant to the Act of Congress approved July 1, 1902 (32 Stat., 641) and was repugnant to the Constitution of the United States and was null and void.

11. That the said court erred in holding that the deeds of Selin Taylor upon which the defendants in error bases his title to said land was good and conveyed a good title to said land to the defendant in error Ben F. Johnson, when, on the date of said deeds said land was restricted and was not alienable under an Act of Congress, approved July 1, 1902, (32 Stat., 641), under said Act of Congress Selin Taylor allotted said land and acquired the title thereto, and Selin Taylor and the plaintiffs in error claim title to said land under said Act of Congress.

Case made pages 47-48.

12. That the said court erred in not rendering judgment in favor of the plaintiffs in error on the record and pleadings in this action when the following facts were established by the record and pleadings. That the title of the plaintiffs in error to the land in controversy in this action was derived from the United States under
49 statute of the United States, approved June 28, 1898, (30 Stat., 495), and July 1, 1902 (32 Stat., 641), and the plaintiffs in error claims title to said land under above statutes, and under said statutes, said land was not alienable on the date of the deeds executed by Selin Taylor, and upon which the defendant in error bases his title to said land and said deeds and attempted conveyances to the defendant in error are an impeachment and impairment of the title to the plaintiffs in error to said land derived from the United States under the foregoing Statutes to the great property loss and damage of the plaintiffs in error and said deeds and attempted conveyances are repugnant to the foregoing statutes, and to the Constitution of the United States and *is* null and void.

Wherefore, the plaintiffs in error prays that said judgment be reversed and set aside, and judgment rendered in favor of the plaintiffs in error by this court.

ELI P. WILLIAMS,
ELMER WILLIAMS,
CHARLES H. WILLIAMS,
Plaintiffs in Error.
FRANK O. JOHNSON,
Attorney for Plaintiff in Error.

Filed Apr. 7, 1910. W. H. L. Campbell, Clerk.

50 Supreme Court, March Term, 1912, March 12th, 1912, First Judicial Day.

Supreme Court Commission, Division No. One.

#1568.

ELI P. WILLIAMS, ELMER WILLIAMS, and CHARLES W. WILLIAMS, Plaintiffs in Error,
vs.
BEN. F. JOHNSON, Defendant in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the lower court should be affirmed.

And it is therefore ordered and adjudged by the court that the judgment of the lower court in the above cause, be, and the same is hereby affirmed.

Opinion by

ROBERTSON, *C.*

By the COURT: It is so ordered, the above opinion is hereby adopted in whole, and judgment is entered accordingly.

51 (Filed March 12, 1912.)

In the Supreme Court of the State of Oklahoma.

Supreme Court Commission, Division No. One.

No. 1568.

ELI P. WILLIAMS, ELMER WILLIAMS, and CHARLES W. WILLIAMS, Plaintiffs in Error,
vs.
BEN F. JOHNSON, Defendant in Error.

Syllabus.

1. When Congress determines that the best interests of the Indian will be subserved by the abrogation, annul*l*ment, amendment or repeal of a Treaty agreement made with a Tribe of Indians, it may, by subsequent act, make the necessary modification or amendment, and of the advisability, or expediency, of such change or alteration, Congress is the sole and exclusive judge, the question being political and not judicial, is therefore not a proper subject for consideration by the courts.

2. The repeal of a law by implication is not favored by the courts, and will not be held to exist if there is any other reasonable con-

struction or interpretation by which the conflicting acts may be sustained; but where there is a hopeless & irreconcilable conflict between two acts of Congress the latter will prevail over the former. In this case, the act of Congress of April 21, 1904, (33 Stat. L. 204) repeals by implication, in so far as there is such conflict, the act of Congress of July 1, 1902, (32 Stat. L. 641).

52 Error from the District Court of Grady County.

Frank M. Bailey, Judge.

Action by Ben F. Johnson against Eli P. Williams, Elmer Williams, and Charles H. Williams to quiet title to real estate. Judgment for Plaintiff. Defendants bring Error. Affirmed.

Frank O. Johnson, for Plaintiffs in Error.
Bond & Melton, for Defendant in Error.

ROBERTSON, *C.:*

Ben F. Johnson, hereinafter designated as plaintiff, filed his petition in the District Court of Grady County on July 27th, 1909, against Eli P. Williams, Elmer Williams and Charles H. Williams, hereinafter designated as defendants, and sought thereby to quiet the title to certain real estate in Grady County; thereafter by leave of court, plaintiff amended his petition and alleged in substance that he was the legal owner in fee simple and in the actual and peaceable, possession of certain real estate in Grady County, describing it; that said land was allotted to Selin Taylor, a member of the Choctaw Tribe of Indians by blood; that on November, 22d, 1904, there was issued to said Taylor a patent for said land, signed by Green McCurtain, Principal Chief of the Choctaw Nation, and Douglass H. Johnson, Governor of the Chickasaw Nation, and Thomas Ryan, acting Secretary of the Interior, in behalf of the United States; that at the time of the allotment of said land the same was inalienable; that on February 9th, 1906, the United States Indian Agent issued to Selin Taylor certificate No. 2458, removing the disabilities of said Selin Taylor on the alienation of said land; that after said certificate of removal, to-wit: February, 16th, 1906, Selin Taylor, for a valuable consideration made and delivered to C. B. Campbell his warranty deed, thereby conveying to said Campbell the land in question, which deed is of record in the office of the Register of Deeds of Grady County; that on the 13th day of March 1906,
53 said Campbell and his wife conveyed said land by warrant-deed to the plaintiff, Ben F. Johnson; that thereby said plaintiff acquired the full and complete title to said land; that on November 15th, 1906, Selin Taylor and his wife, Ellen Taylor, made and delivered to James E. Whitehead their warranty deed to the land in question; that on October 22, 1906, Whitehead conveyed to J. E. McNeill all his interest in said land, and that thereafter, on October 25th, 1909, McNeill conveyed all his right, title and interest

in and to said land to the plaintiff, Ben F. Johnson; that by reason of the conveyances aforesaid the plaintiff now holds the legal and equitable title to said land.

Plaintiff further charged that the defendants and each of them claim some title to said land by virtue of a certain power of attorney executed by Selin Taylor, covering the lands in question, on March 11th, 1907, said instrument filed for record in the office of the U. S. Court at Chickasha, and duly recorded therein, and now a matter of record in the office of the Register of Deeds of Grady County; that said power of attorney is void and of no force and effect and that by virtue thereof, defendants have acquired no right, title, interest or estate in and to said lands; that said power of attorney is void, yet it clouds the title of plaintiff, and unless cancelled and set aside by the court, will injure the title and interests of the plaintiff in and to said land.

The defendants filed their answer in due time, which, besides being a general denial, admits that plaintiff is in possession of the land in controversy, but, alleges that said possession is unlawful, and that plaintiff has no title thereto; they admit that the land was allotted to Selin Taylor, and that Taylor was a member of the Choctaw Tribe of Indians; that the patent was issued to him as alleged in the petition of the plaintiff, and that at the time of the allot-
54 ment the land was inalienable; that said allotment was made on May 23d, 1903, and that Taylor received his allotment certificate and patent to the same under an Act of Congress approved July 1st, 1902, known as, "An Act to ratify and confirm and Agreement with the Choctaw and Chickasaw Tribes of Indians, and for other purposes," that said Act was called an "Agreement," and was ratified by Congress and by a majority of the legal voters of the Choctaw and Chickasaw Tribes, in the manner required in said Agreement, and that said Agreement was far a valuable and sufficient consideration, and is a binding contract upon the United States and the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws, and particularly Selin Taylor, and that same is now in full force and effect; defendants further allege that Selin Taylor is not a ward of the United States, and was not, at the time he was allotted said land; that by Act of Congress approved March 3d, 1901 (31 Stat. L. 1447) Selin Taylor was made a citizen of the United States and thereby entitled to all rights, privileges and immunities of other citizens.

Defendants further allege that the Choctaw and Chickasaw Nations, and not the United States are the grantors in the patent to Selin Taylor, for said land, and set up a copy of said patent as an exhibit to and make it a part of their answer; that said grantors, the Choctaw and Chickasaw Nations, imposed restrictions on said Selin Taylor, in said patent against the alienation of said land, for the protection and benefit of Selin Taylor, and said grantors have not in any way consented to the removal of the restrictions against the alienation of said land; that said restrictions are in full force and effect, but that wholly disregarding said restrictions so imposed in said patent C. B. Campbell, and James E. Whiteheld, induced said

Selin Taylor, to execute to them, to his great property loss and damage, the deeds complained of herein, and that said deeds so
55 executed by said Taylor, to said parties, are in violation of the restrictions upon alienation contained in his patent, and are therefore illegal and void. Defendants further allege that said patent was issued by authority of Section 29, of an act of Congress approved June 28, 1898, (30 Stat. L. 495) and attach a copy of said Section to their answer as an exhibit; they further allege that said patent contained the following clause:

"Subject however, to the provisions of the Act of Congress approved July 1st, 1902 (32 Stat. L. 641).

and on account of said clause in said patent the entire Act of Congress became a part of said patent and a copy of said Act is also attached to the answer and made a part thereof.

They further allege that Selin Taylor and the defendants claim title to said land under said Agreement as aforesaid, and also under the patent to said land issued by the Choctaw and Chickasaw Nations to Selin Taylor; that said Agreement, and said patent, imposed restrictions upon the alienation of all lands allotted to members of the said Tribes, for the protection and benefit of said members, and that Selin Taylor, a full blood Choctaw Indian, and a member of the Choctaw Tribe of Indians, and who did not understand the English language, and was wholly ignorant of land values, and was in need of, and entitled to, the protection and benefit of said restrictions so imposed, and conditioned as he was, on the date of his deeds complained of to Campbell and Whitehead said protection and restrictions were of great value to him and was to him property as much as the land itself.

Defendants admit that Taylor executed the deed to Campbell as charged in the petition, and also admit that Taylor, and his wife, executed the deed to Whiteheld, as alleged in the petition, and they allege also that plaintiff's title and right of possession to said land is based upon said deeds, and that said deeds were executed under an unconstitutional Act of Congress, approved April 21st,
56 1904 (33 Stat. L. 204) which attempted to remove the restrictions upon the alienation of said land to the great property loss and damage to said Taylor and the defendants, contrary to and in open violation of the restrictions against alienation in the act of Congress approved July 1st, 1902 (32 Stat. L. 641) under which Selin Taylor allotted said land and acquired title thereto, and also contrary to and in open violation of the restrictions against alienation contained in the patent from the Choctaw and Chickasaw Nations, to Selin Taylor for said land. They also charge that on account of said last mentioned Act of Congress, and on account of the restrictions contained in said patent, said land was not alienable when Taylor executed the deeds to Campbell and Whiteheld, and said deeds are therefore illegal and void, and conveyed no title to said land. Defendants further allege that the plaintiff, by virtue of the pretended title based upon said illegal deeds, and in open violation of and contrary to the restrictions contained in the patent,

as well as of the restrictions contained in the Act of Congress of July 1st, 1902, has taken possession of said land and claims it as his own, and refuses to surrender possession, or attorn for the rents, which conduct is an impeachment and impairment of the title to said land derived from the United States, and the Choctaw and Chickasaw Nations, as well as of the defendant's interests in said land by reason of the power of attorney as aforesaid, and is in violation of the Constitution and laws of the United States. Defendants admit that the restrictions were removed from Selin Taylor, by certificate No. 2458 as alleged in plaintiff's petition and admit that said certificate was issued under authority of Act of Congress approved April 21, 1904 (33 Stat. L. 204) and that the object of said Act of Congress and of said certificate is to remove the restrictions upon the alienation of the lands in question, but allege that both the Act of Congress as aforesaid, and said certificate No. 2458, impairs the *objection* of a contract, or a binding agreement, upon
57 the United States, and upon the Choctaw and Chickasaw Nations, and upon all Choctaws and Chickasaws, and especially Selin Taylor, and that the same are an impeachment, and impairment, of the title to said land, as well as an impeachment, and impairment, of the interests of the defendants in and to said lands, and the rents thereof, and that the same are repugnant to the Act of Congress approved July 1, 1902, (32 Stat. L. 641) under which Selin Taylor allotted the land, and that they are repugnant to the constitution of the United States and the clause in the fifth amendment thereof which provides that no person shall be deprived of prop-rty without due process of law, and are therefore unconstitutional, illegal and void. Defendants pray in their answer for a judgment cancelling and annulling the deeds executed by Taylor to Campbell, and from Campbell to Johnson, and also the deed from Taylor and his wife to Whiteheld, and the deed from Whiteheld to McNeill, and the deed from McNeill to Johnson, and for a decree annulling and cancelling all the interest of the plaintiff Johnson to the land described and he rents thereof, and the improvements thereon, and for a judgment for the possession of said land, and for rents, and costs, and for general relief. On December 7th, 1909, plaintiff filed a demurrer to the answer of defendants, which, after argument of counsel and due consideration by the court, was sustained on December 16th, 1909, and defendants refusing to plead further, plaintiff thereupon took judgment according to the prayer of his petition, and a decree was entered cancelling the power of attorney given by Taylor, to the defendants, and quieting the title of said land in Ben F. Johnson, and for his costs, from which judgment defendants appeal, and allege many errors in said ruling and judgment, but agree, in their brief, with counsel for plaintiff in error, that the only question in this case is, "Was the land in controversy in this case alienable on the date of the deeds executed by Selin Taylor to the defendant in error Ben F. Johnson, and
58 his grantors and on which the title of Johnson to said land is based?"

The Act of Congress approved July 1st, 1902, (32 Stat. L. 641)

under which the Selin Taylor allotment was made, and the patent issued, contained the following restrictive provisions, to-wit:

"15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this act, nor shall said land be sold except as herein provided.

16. All lands allotted to the members of said tribes, except such lands as *is* set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One fourth in acreage in one year, one fourth in acreage in three years, and the balance in five years, in each case from date of patent. Provided, that such lands shall not be alienated by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw Tribal Governments, for less than its appraised value."

68. No Act of Congress or treaty provisions, nor any provision of the Atoka Agreement inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw Nations.

73. This agreement shall be binding upon the United States and upon the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws when ratified by Congress, and by a majority of the whole number of the votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following: The Principal Chief of the Choctaw and the Governor of the Chickasaw Nation, shall within one hundred and twenty days after the ratification of this agreement by congress, make public proclamation that the same shall be voted upon at any special election to be held for that purpose within ninety days thereafter, on a certain day therein named; and all male citizens of each of said tribes qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement be ratified by said tribes as aforesaid, the date upon which said election is held shall be deemed to be the date of final ratification."

The Act of Congress approved April 21, 1904, (33 Stat. L. 204) removing restrictions, and under which, Taylor executed his deed to Campbell, and Whiteheld, and which defendants allege to be unconstitutional, contains the following provision, to-wit:

"And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian Blood, except minors, and except as to homesteads,
59 may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian Agent at Union Agency in charge of the Five Civilized Tribes, if said agent is satisfied, upon a full investigation of each individual case, that such removal of restrictions is for the best interest of said allottee. The finding of the United States Indian Agent and the approval of the Secretary of the Interior shall be in writing and

shall be recorded in the same manner as patents for lands are recorded."

It is apparent that there is a direct conflict between these two Acts of Congress, and the question therefore, necessarily arises,—Which Act shall control? Or rather,—Has Congress the power to alter, amend or modify, by a subsequent Act of Congress, the provisions of a Treaty with the Five Civilized Tribes of Indians? In the case at bar, Congress, by virtue of the former Act, which was in effect a treaty, between the Choctaw*a* and Chickasaws on the one side, and the United States on the other, and which was ratified by both Congress and the Tribes, provided that the land allotted should be inalienable, except as provided in Section 16 thereof. Two years later, by an independent Act, without the assent of the Choctaw and Chickasaw Nations, Congress provided that the removal of restrictions from all lands except minors, and except as to homesteads, may with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe*d*, upon application to the United States Indian Agent at the Union Agency, etc.

If Congress has such power, to alter, amend, or modify the provisions of a treaty with the Five Civilized Tribes of Indians, then the judgment of the lower court in the case at bar is correct, but if Congress has no such power the judgment is wrong, and must be reversed. The parties to this action concede this to be the test, and agree that the answer to the question will be decisive of this
60 case. Without doubt the Congress of the United States has full authority to treat with the subject matter, of these two Acts, to-wit: The alienation of Indian Allotments, as its judgment may direct, and in that particular the will of Congress is supreme, and is not a subject for the consideration of the courts.

In Godfrey vs. Iowa Land & Trust Co., 21 Okla. 293 it is said:

"There can be no serious question of the authority of Congress to remove restrictions upon the alienation of the lands of allottees without the consent of the Tribe."

In Wadsworth vs. Boyson, 148 Fed. 771, in discussing the question as to whether or not a subsequent Act of Congress can supercede a treaty with a Tribe of Indians, it is said:

"In such cases whenever a conflict is alleged to exist between a treaty and a Legislative Act of amendment, the Courts, in construing them while endeavoring to give force and effect to both, if they can not be reconciled, will give effect rather to the Legislative amendment. A treaty is of no greater force than an Act of Congress, and when it becomes the subject of Judicial cognizance, in the Courts, it is held to be subject to such provisions as Congress may make by modification or amendment. This rests upon the established rule that the provisions of an Act of Congress passed in the exercise of its constitutional power, when clear and explicit, will be upheld by the Courts, although in seeming conflict with an antecedent treaty stipulation."

In Ward vs. Racehorse, 163 U. S. 503, 16 Sup. Ct. Rep. 1076, Mr. Justice White, now Chief Justice White, said in discussing this identical question: "That a treaty may supercede a prior Act of Congress and an Act of Congress supercede a prior treaty, is elementary," citing Fong Yue Ting v. U. S. 149 U. S. 698, 13 Sup. Ct. Rep. 1016. In the Cherokee Tobacco case, 11 Wall. 621, the Supreme Court of the United States held that an Act of Congress imposing a tax on tobacco, if in conflict with a prior treaty with the Cherokees, was paramount to the treaty.

This is a very strong case in support of the doctrine that
61 a subsequent act of Congress on the same subject takes precedence over a prior treaty agreement, and this doctrine obtains not alone to the so-called treaties between the Government and the various Indian Tribes, but with foreign Nations as well. In Thomas vs. Gay, 168 U. S. 262, the Supreme Court of the United States held that an Act of May 2d, 1890, creating the Territory of Oklahoma, prevails over and against the provisions of a prior treaty between the United States and the Osage Indians.

In Lone Wolf vs. Hitchcock, 187 U. S. 553, the Supreme Court held tha- the power existed in Congress to abrogate the provisions of an Indian Treaty, though presumably such power would be exercised only when circumstances arose which would not only justify the Government in disregarding the stipulations of the Treaty, but which demand, in the interest of the country, and the Indians themselves, that it should be so.

In Lone Wolf vs. Hitchcock, supra, it was held that:

"Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government."

In Tiger vs. Western Inv. Co. 221 U. S. 286, 31 Sup. Ct. Rep. 578 it was held that:

"Congress in pursuance of the law and the established policy of the Government, has a right to determine for itself when the guardianship which has been maintained over the Indians shall cease."

In view of the general policy of the Government extending over almost the entire history of our country, we are warranted in saying that Congress has had, at all times, and still has, the authority, to pass any law that would be for the best interests of the Indians, and of the advisability, or expediency of such law, Congress alone, is the sole and exclusive judge. The mere fact that Taylor was a citizen does not render the guardianship of the Government
62 over the Indian Lands incompatible. Tiger vs. Western Inv. Co. *supra*. Nor is there any merit in the theory advanced by counsel for plaintiff that enforcement of the Act of Congress of April 21st, 1904, would result in the taking of property without due process of law. This seems to be the settled and established holdings of the courts, relative to this question. If Congress, in its

wisdom, finds that the best interests of the Indian, and all others concerned, will be best subserved by the abrogation or annullment of a treaty agreement made with a Tribe of Indians, it has full power, by subsequent Act to make the necessary alteration, modification, or amendment. We are of opinion that the position of defendants in the instant case is wholly untenable in the light of the foregoing authorities, which are not only persuasive in reason, and in harmony with the settled policy of the government in its dealings with the Indians, but which are also conclusive and controlling as matters of law on this court on the question involved.

It is true, in this as well as in other cases, that the settled rule of construction, undoubtedly is, that repeals by implication will not be favor-d, and will not be held to exist if there be any other reasonable construction or interpretation by which both acts may be sustained, but in this case that question is not open for discussion, for there is a hopeless and irreconcilable conflict between the two acts of Congress, and in such case, the authorities are unanimous that the last will prevail over the former. In this case the Act of April 21st, 1904, controls and the Act of July 1st, 1902, in so far as it conflicts with the same, is of no force or effect, being repealed, if not directly then by necessary implication.

Counsel for plaintiff in error have not cited a single authority in support of their contention. They have pleaded the various acts of Congress, together with the patent to the land and the certifi-
63 cate of removal of disability as issued by the Indian Agent, and approved by the Secretary of the Interior, and reply upon the assertion that the Act of April 21st, 1904, is repugnant to, and violative of, the provisions of the Federal Constitution, and the former Act of Congress, under which the land was allotted. As has been seen, Congress, from the beginning, has exercised a supervisory care over the persons and the estate of the Indians, and this being a political power, it remains for Congress in the exercise of its discretion and wisdom, to say what the policy of the Government shall be when dealing with these defendant people. By the Act of April 21st, 1904, it was deemed expedient to remove the restrictions as to alienation of lands, from all except as to minors, and as to homesteads, subject to certain requirements provided for in said Act. Whether or not this was a wise provision is not a question for the courts.

At the time of the passage of this Act, the patent to Taylor had not been issued; his restrictions as to alienation were removed February 19th, 1903. On February 16, 1906, he deeded the land to Campbell, and after the issuance of the patent, and on November 15th, 1906, he again deeded it to Whitehead. The plaintiff obtained title to the land from both Campbell and Whitehead, and thereafter the power of attorney executed by Taylor to plaintiffs in error, was placed of record on March 19th, 1907. This, without doubt, is a cloud upon the title of the plaintiff, and he was entitled to have the same cancelled and removed and inasmuch as Congress, as we have seen, had the undoubted right and authority to alter, amend or modify by subsequent legislation, the provisions of any treaty or agreement, made with any Tribe of Indians, and inasmuch as it did, by

the Act of April 21st, 1904, by necessary implication, abrogate the provisions of the Act of Congress approved June 30th, 1902,
64 in so far as restrictions or alienability were concerned, it necessarily follows that Taylor, after obtaining the patent to the land in question, and after the passage of the Act of Congress, April 21st, 1904, and the removal of his disabilities according to law, had a right to sell said land. This being true, the plaintiff was entitled to a judgment in the court below. There being no error in the record, the judgment of the District Court of Grady County should be affirmed.

March 12, 1912.

By the Court—Adopted in whole.

65 UNITED STATES OF AMERICA,
State of Oklahoma, ss:

I, W. H. L. Campbell, Clerk of the Supreme Court of the State of Oklahoma do hereby certify that the annexed and foregoing are true, full and complete copies of the Præcipe for parts of record; Plaintiff's Amended Petition; Allotment Patent to Selin Taylor "Exhibit D"; Defendant's Answer to Plaintiff's Amended Petition; Power of Attorney "Exhibit C"; Certificate of Removal of Restrictions "Exhibit D"; Demurrer to Amended Answer of Defendant; Judgment of trial Court; Petition in Error; Journal Entry affirming cause; Opinion of the Supreme Court; Bond; and the original Citation; Petition for Writ of Error; Order allowing Writ and fixing Bond; Assignment of Error and Writ of Error, as the same now appear of record and on file in my office.

In Witness Whereof I hereunto set my hand and affix the seal of said Court, at Oklahoma City, this, the 25th day of February, 1914.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 24,124. Oklahoma Supreme Court Term No. 414. Eli P. Williams, Elmer Williams, and Charles H. Williams, plaintiffs in error, vs. Ben F. Johnson. Filed March 23d, 1914. File No. 24,124.

16

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No. [redacted] 110

In the

Supreme Court of the United States

October Term, 1914.

ELI P. WILLIAMS, ELMER WILLIAMS and CHARLES H. WILLIAMS, *Plaintiffs in Error,*

vs.

BEN F. JOHNSON, *Defendant in Error.*

BRIEF OF PLAINTIFFS IN ERROR.

BRUCE-GROVES, LAW PRINTERS, KANSAS CITY, MO.

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vs.

BEN F. JOHNSON, *Defendant in Error.*

BRIEF OF PLAINTIFFS IN ERROR.

No. 414.

STATEMENT.

This suit is a suit in the ordinary form to quiet title to certain land involved therein and was begun in the District Court of Grady County, Oklahoma, by the defendant in error, Ben F. Johnson, plaintiff below (hereinafter called plaintiff), against the plaintiffs in error, Eli P. Williams, Elmer Williams and Charles H. Williams, defendants below (hereinafter called defendants).

October 28, 1909, plaintiff filed his "Amended Petition to Quiet Title," and it will appear from said petition (Record, pp. 8 to 20) that plaintiff's contention in this case is briefly as follows:

That the land involved is the allotment of Selin Taylor other than homestead; that Selin Taylor is

a member of the Choctaw Tribe of Indians; that at the time of the allotment of said land the same was under the law inalienable; that on February 9, 1906, the United States Indian Agent issued to Selin Taylor certificate No. 2458 (Rec., p. 28) for the removal of the restrictions upon the alienation of his allotment, and after said certificate was issued, to-wit, on February 16, 1906, and March 13, 1906, Selin Taylor executed the deeds complained of, and on said deeds the plaintiff's title to said land is rested, and under said deeds plaintiff took possession of said land and claims the title thereto.

The plaintiff claims title to said land as above and in this case seeks to set aside and cancel of record a certain instrument (Rec., pp. 25 to 27) executed March 11, 1907, by Selin Taylor and Eli P. Williams, Elmer Williams, Charles H. Williams.

December 4, 1909, defendants filed their answer to plaintiff's "Amended Petition to Quiet Title," and it will appear from said answer (Rec., pp. 21 to 30) that the defendants, in part, briefly contend that the plaintiff has no title to said land and his possession is unlawful, and has no right to maintain this action; that Selin Taylor when he executed said deeds was without power to convey said land under the restrictions against the alienation of said land contained in the Agreement Acts of Congress and patent referred to in said answer.

That certificate No. 2458 is illegal and the removal of the restrictions upon the alienation of said land thereunder is illegal and of no force and effect.

That the instrument (Rec., pp. 25 to 27) plaintiff seeks to annul and cancel of record by this proceeding is a lawful contract and is a binding obli-

upon all the parties thereto and is in full and effect, and defendants have the right there- to recover the possession of said land and thereof in this action.

December 7, 1909, plaintiff filed a demurrer to answer (Rec., pp. 30-31).

December 16, 1909, this case was submitted to rial court upon the plaintiff's demurrer to de- nts' answer and the trial court sustained the iff's demurrer (Rec., pp. 31, 32) and rendered ment in this suit against the defendants.

Appeal by the defendants from said judgment e trial court was duly taken to the Supreme of Oklahoma.

March 12, 1914, this case was decided on above al by the Supreme Court of Oklahoma and the ment of the trial court was affirmed (Rec., pp. 44); that this court is the highest court in state in which a decision in said case could be (Rec., p. 2).

February 6, 1914, an appeal by writ of error allowed the defendants (Rec., pp. 5 and 6) from udgment of the Supreme Court of Oklahoma to Supreme Court of the United States.

estion at Issue and Controlling in This Suit.

From the petition and answer it is evident that sole purpose of plaintiff in this suit is to annul cancel of record a certain instrument (Rec., 5 to 27), and it is also evident that the plaintiff's and right of possession of said land is rested wo deeds executed by Selin Taylor, dated Feb- y 16, 1906, and March 13, 1906.

That the right of Selin Taylor to convey said land when he executed the foregoing deeds depends solely upon the legality of certificate No. 2458 issued to Selin Taylor (Rec., p. 28), dated February 9, 1906.

Plaintiff contends that said certificate is legal and removed the restrictions upon the alienation of said land; that Selin Taylor had the lawful right to convey said land when he executed said deeds and plaintiff has good title thereto.

Defendants contend that said certificate is illegal and void and did not remove the restrictions upon the alienation of said land; that said land was restricted and was not alienable and Selin Taylor was without power to alienate said land when he executed said deeds, and said deeds are illegal and void and plaintiff has no title to said land or right to the possession thereof and no right to maintain this suit.

With the petition for writ of error in this case there was filed on February 6, 1914, with the clerk of the Supreme Court of Oklahoma, an assignment of errors (Rec., pp. 3, 4), and said assignment of errors is as follows:

"ASSIGNMENT OF ERRORS.

Come now the plaintiffs in error and say that the decision and final judgment of this court is erroneous as follows, to-wit:

1. That the court erred in sustaining the judgment of the court below and in holding that the Act of Congress of April 21, 1904 (33 Stat. L. 204), was constitutional and applicable to the land involved herein, and that the restrictions upon the sale of said land were lawfully removed under said Act, and that Selin Taylor had the lawful right to convey and did convey said land thereunder.

Because said removal was repugnant to and violative of the restrictions against the sale of said land placed in the patent to Selin Taylor by the grantors in said patent, the Choctaw and Chickasaw Nations, who were the owners of the fee simple title to said land, and had the lawful right to restrict the sale of said land by Selin Taylor as they did in said patent.

Because said removal of restrictions is also repugnant to and violative of the restrictions against the sale of said land contained in the Act of Congress of July 1, 1902 (32 Stat. L. 641), and because said Act is a binding agreement for a valuable consideration upon Selin Taylor, the Choctaw and Chickasaw Nations and the United States.

Because said removal of restrictions is repugnant to the Constitution of the United States and to the Fifth Amendment thereof, and is unconstitutional and void.

Because said restrictions are repugnant to and violative of the pre-existing contract rights of the Choctaw and Chickasaw Nations and Selin Taylor, to their great loss and damage.

2. That said Act of Congress is a binding agreement upon the United States, the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws, as will appear from the Act itself.

We quote the following therefrom (said Act is entitled as follows):

'An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes.'

* * * * * * *

'Witnesseth that, in consideration of the mutual undertakings herein contained, it is agreed as follows:'

* * * * * * *

Section 68 is as follows:

'(68). No Act of Congress or treaty provision, nor any provision of the Atoka agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw Nations.'

Section 73 is in part as follows:

'(73). This agreement shall be binding upon the United States and upon the Choctaw and Chickasaw Nations and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following:'

Said agreement was approved by Congress July 1, 1902, and ratified by a majority vote of the Choctaw and Chickasaw tribes September 25, 1902, as provided in said agreement.

3. The court erred in not holding that said Act of Congress of April 21, 1904, was unconstitutional, so far as applied to the removal of restrictions on the land involved herein, and that the removal of restrictions thereunder was illegal and void, and that Selin Taylor was without power to convey said land, and that the deeds of Selin Taylor (on which the title to said land of the adverse claimants is rested) were illegal and void, and in not rendering judgment in favor of the plaintiffs in error.

4. That the decision and judgment of the court in above entitled case is contrary to law.

Wherefore, plaintiffs in error pray that the judgment herein be reversed and set aside, and a judgment rendered in favor of the plaintiffs in error, and for such other general relief as may to the court be deemed just and equitable.

ELI P. WILLIAMS,
ELMER WILLIAMS,
CHARLES H. WILLIAMS,
Plaintiffs in Error."

BRIEF OF ARGUMENT ON JURISDICTION.

The first question presented is the jurisdiction of this Honorable Court.

The rule is settled where questions arising under the Constitution and laws of the the United States were presented in the Supreme Court of the state and were by that court considered and decided against the party invoking their protection, that such cases are appealable by writ of error to the Supreme Court of the United States.

San Jose L. & W. Co. v. *San Jose Ranch Co.*, 189 U. S. 177.
Mallett v. *North Carolina*, 181 U. S. 589.

It is apparent upon the face of the judgment of the Supreme Court of Oklahoma rendered herein (Rec., pp. 35 to 44) that there were questions arising under the Constitution and laws of the United States in this case presented, considered and decided by said court against your petitioners, who invoked the protection thereof, and therefore this case is clearly within the rule set out above and is appealable by writ of error to the Supreme Court of the United States.

BRIEF OF ARGUMENT ON THE MERITS.

We contend that the law is settled as held by this Court in *Ward* v. *Racehorse*, 163 U. S. 503. In this case the Court said:

> "That a treaty may supersede a prior Act of Congress, and an Act of Congress supersede a prior treaty, is elementary."

We contend that the law is just as well settled that Congress is without power to change a contract or agreement for a valuable consideration with an individual Indian allottee.

> *Choate* v. *Trapp*, 224 U. S. 665.
> *Jones* v. *Mehan*, 175 U. S. 1.

In the Choate case, *supra*, the Court had under consideration the Act of Congress of May 27, 1908 (35 Stat. at L. 312, Chap. 199), and the power of Congress to pass said Act and by said Act to tax, as provided therein, certain allotted lands that were not taxable under the Atoka agreement under which said lands were allotted. We quote the following from said Act:

> "That all land from which restrictions have been removed or shall be removed shall be subject to taxation."

It will be remembered that the Atoka agreement (being Section 29 of Act of Congress of June 28, 1898, 30 Stat. 495), under which the land in controversy in the Choate case was allotted, contained the following:

> "All the lands allotted shall be non-taxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent."

It will be observed that under the Atoka agreement that all allotted lands that the title remains in the original allottee were not taxable for twenty-one years from date of patent; that the Act of Congress above, in direct conflict with said agreement, provided that all lands from which the restrictions have been removed or shall be removed shall be subject to taxation. This was a radical change in taxing allotted lands, and from the foregoing it is evident that if the restrictions were removed at once all of said lands would be taxable at once, and the exemption from taxation in the Atoka agreement would be of no avail.

Selin Taylor's private property rights protected by Constitution of the United States.

In the Choate case, *supra*, the Supreme Court denied the right to tax allotted lands as provided in the Act of Congress of May 27, 1908, referred to above, and held that the Atoka agreement was controlling; that said lands were not taxable under said

Act of May 27, 1908, or as provided therein. We quote the following from the opinion of the Supreme Court in the Choate case:

> "This sovereign and plenary power was exercised and retained in all the dealings and legislation under which the lands of the Choctaws and Chickasaws were divided in severalty among the members of the tribes. For, although the Atoka agreement is in the form of a contract, it is still an integral part of the Curtis Act, and, if not a treaty, is a public law relating to tribal property, and as such was amendable and repealable at the will of Congress. But there is a broad distinction between tribal property and private property, and between the power to abrogate a statute and the authority to destroy rights acquired under such law. *Reichart* v. *Felps*, 6 Wall. 160, 18 L. Ed. 849. The question in this case, therefore, is not whether the plaintiffs were parties to the Atoka agreement, but whether they had not acquired rights under the Curtis Act which are now protected by the Constitution of the United States."

Land involved herein was not alienable under the "Agreement Between the United States and the Choctaws and the Chickasaws," and Selin Taylor when he executed the deeds complained of was without power to alienate said land.

Selin Taylor allotted the land involved herein and acquired the title thereto under an "Agreement between the United States and the Choctaws and Chickasaws," dated March 21, 1902. This agreement

was ratified by Act of Congress of July 1, 1902 (32 Stat. 641), and was ratified on September 25, 1902, by a majority vote of the Choctaws and Chickasaws, as provided in said agreement.

We contend that it is apparent upon the face of said agreement that it is a contract for a valuable consideration and is a binding agreement upon the United States and upon the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws as provided therein; that by said agreement certain valuable contract rights were secured to the parties to said agreement; that said contract rights are protected from repeal by the Constitution of the United States and the Fifth Amendment thereof.

We quote the following from said agreement and Act of Congress ratifying said agreement:

> "An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians and for other purposes.
>
> Be it Enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled, That the following agreement, made by the Commission to the Five Civilized Tribes with the commissioners representing the Choctaw and Chickasaw tribes of Indians on the twenty-first day of March, nineteen hundred and two, be, and the same is hereby ratified and confirmed, to-wit:
>
> 'AGREEMENT BETWEEN THE UNITED STATES AND THE CHOCTAWS AND CHICKASAWS.
>
> This agreement, by and between the United States, entered into in its behalf by Henry S. Dawes, Tams Bixby, Thomas B. Needles and Clifton R. Breckinridge, commissioners duly ap-

pointed and authorized thereunto, and the Choctaw and Chickasaw tribes of Indians in Indian Territory, respectively, entered into in behalf of such Choctaw and Chickasaw tribes by Gilbert W. Dukes, Green McCurtain, Thomas E. Sanguin and Simon E. Lewis in behalf of Choctaw tribe of Indians, and Douglas H. Johnston, Calvin J. Grant, Holmes Willis, Edward B. Johnson and Benjamin H. Colbert in behalf of the Chickasaw tribe of Indians, commissioners duly appointed and authorized thereunto—

Witnesseth, that, in consideration of the mutual undertakings herein contained, it is agreed as follows.' "

Sections 16, 68 and 73 of said agreement are as follows:

"16. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead, as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years, in each case from date of patent; *provided*, that such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value."

"68. No Act of Congress or treaty provision, nor any provision of the Atoka agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw Nations."

"73. This agreement shall be binding upon the United States, and upon the Choctaw and Chickasaw Nations and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the

> legal voters of the Choctaw and Chickasaw tribes in the manner following: The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall, within one hundred and twenty days after the ratification of this agreement by Congress, make public proclamation that the same shall be voted upon at any special election to be held for that purpose within thirty days thereafter, on a certain day therein named; and all male citizens of each of said tribes qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement be ratified by said tribes as aforesaid, the date upon which said election is held shall be deemed to be the date of final ratification."

Defendants contend that the foregoing agreement is as plain as the English language could make it and speaks for itself, and if it is not a contract for a valuable consideration and a binding agreement upon the United States and upon the Choctaw and Chickasaw Nations and all Choctaws and Chickasaws, and Selin Taylor, that it is not possible for Congress to make an agreement that is binding, yet we know that Congress can make an agreement that is binding upon Congress and the United States. This question is so well settled by many decisions of the Supreme Court of the United States that it seems unnecessary to cite the cases. However, we desire to call the Court's attention to the Choate case, *supra*. This case is very much in point, for the court in this case had under consideration the same question

that is involved in the case at bar, to-wit, the rights secured to Indian allottees by allotment agreements.

In this case the court said:

> "As plaintiffs were offered the allotments on the conditions proposed; as they accepted the terms and, in the relinquishment of their claim furnished a consideration which is sufficient to entitle them to enforce whatever rights were conferred, we are brought to the consideration of the question as to what those rights were."

In the above case, the Supreme Court, in referring to Indian rights, said:

> "His right of private property is not subject to impairment by legislative action, even while he is, as a member of a tribe, subject to the guardianship of the United States as to his political and personal status. This was clearly recognized in the leading case of *Jones* v. *Meehan*, 174 U. S. 1, 44 L. Ed. 49, 20 Sup. Ct. Rep. 1."

We contend that the alienation of the land involved is controlled by Section 16 of said agreement, quoted above, and that said land was not alienable thereunder when Selin Taylor executed the deeds complained of.

It will appear from the plaintiff's "Amended Petition to Quiet Title" (Rec., pp. 8 to 20) that plaintiff does not claim that said land was alienable under said agreement when Selin Taylor executed said deeds, but contends that the restrictions upon the alienation of said land were removed by certificate No. 2458, and therefore Selin Taylor had the lawful right to alienate said land when he executed said deeds.

The Choctaw and Chickasaw Nations were the owners of said land and were the grantors in the patent that conveyed said land to Selin Taylor.

The title of the Choctaw and Chickasaw Nations to said land is rested on a patent dated March 23, 1842, from the United States to the Choctaw Nation. Said patent is as follows:

"PATENT FROM THE UNITED STATES TO THE CHOCTAW NATION.

Record No. 7, Recites: Patent, United States of America to Choctaw Nation.

That the Treaty of Dancing Rabbit Creek, held on September 15, 1830, ratified by the Senate of the United States, February 24th, 1831 (7 Stat., p. 338), by and between the commissioners on the part of the United States, and the Mingoes, Chiefs, Captains and Warriors of the Choctaw Nation, on the part of said Nation, provides as follows by Article II:

The United States, under a grant especially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River in fee simple to them and to their descendants, to inure to them while they shall exist as a Nation and live on it. Beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or, to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning—the boundary of the same to be agreeable to the Treaty made and concluded at Washington City in the year 1825.

Therefore, in consideration of the premises and in execution of the Agreement and stipula-

tions in the aforesaid Treaty, the United States of America do Give and Grant unto the said Nation the aforesaid 'Tract of country West of the Mississippi.'

To have and to Hold the same in fee simple to them and their descendants, to inure to them while they shall exist as a Nation and live on it, liable to no transfer or alienation, except to the United States or with their consent.

Test, I, John Tyler, President of the United States of America, have caused letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, March 23, 1842.

By the President, JOHN TYLER.

DANIEL WEBSTER,
Secretary of State.
JOHN C. SPENCER,
Secretary of War.
T. HARTLEY CRAWFORD,
Com. Indian Affairs.
J. WILLIAMSON,
Recorder Gen. Land Office.

Recorded Vol. L, p. 43.

Executed in the Bureau of Topograhpical Engineers.

JOHN A. ALBERT,
Col. Corps T. Engineers."

In *Fleming* v. *McCurtain,* 215 U. S. 56, the court had under consideration above patent to the Choctaw Nation and the treaties relating to said patent, and also sets out how the Chickasaws acquired an interest in said land, and it appears from above opinion that the Choctaw and Chickasaw Nations have complete title to said lands except said Nations have no

right to transfer or alienate said land except to the United States or with their consent.

The Choctaw and Chickasaw Nations were the grantors in the patent that conveyed and transferred said land to Selin Taylor, and it will appear upon the face of said patent that on August 24, 1905, the United States approved said patent and thereby consented to the transfer of said land to Selin Taylor upon the conditions set out in said patent, and said patent thereby became a binding obligation upon the United States, the Choctaw and Chickasaw Nations, and Selin Taylor.

The foregoing patent from the Choctaw and Chickasaw Nations to Selin Taylor contained the following clause:

> "subject, however, to the provisions of the Act of Congress approved July 1, 1902." (32 Stat. 641.)

Said Act (herein called agreement) by above clause became a part of said patent as effectually as if the provisions of said agreement (including the restrictions against the alienation of said land) were written out in full in said patent.

The Secretary of the Interior approved the patent to Selin Taylor, with all the restrictions therein contained, and the Choctaw and Chickasaw Nations, the owners of the title to said land and the grantors in the patent that conveyed the land to Selin Taylor, have not consented to the removal of said restrictions. (For patent to Selin Taylor see Rec., pp. 19, 20.)

That the Choctaw and Chickasaw Nations, the grantors in the patent to Selin Taylor, had the lawful right to restrict the alienation of said land, as they did in said patent, and withhold from the

donee, Selin Taylor, for a season the power to sell said land or otherwise dispose of it.

In *Tiger* v. *Western Investment Co.*, 221 U. S. 286, the court said:

> "We know of no reason, nor has any been suggested, why it was not competent for Congress to declare that these Indians should be deemed citizens of the United States, and entitled to the rights, privileges and immunities of citizens, while it retained, for the time being, the title to certain lands in trust for their benefit, and withheld from them for a certain period the power to sell, lease, or otherwise dispose of their interest in such lands. It is competent for a private donor, by deed or other conveyance, to create an estate of that character; that is to say, it is competent for a private person to make a conveyance of real property and to withhold from the donee for a season the power to sell or otherwise dispose of it."

When Selin Taylor accepted the patent and the benefits therein from his grantors, the Choctaw and Chickasaw Nations, Selin Taylor was bound by the restrictions against the alienation of said land contained in said patent.

In *Choate* v. *Trapp, supra,* the court said:

> "Upon delivery of the patent the agreement was executed, and the Indian was thereby vested with all the right conveyed by the patent, and, like a grantee in a deed poll, or a person accepting the benefit of a conveyance, bound by its terms, although it was not actually signed by him. *Keller* v. *Ashford,* 133 U. S. 621, 33 L. Ed. 672, 10 Sup. Ct. Rep. 494; *Hendrick* v. *Lindsay,* 93 U. S. 143, 23 L. Ed. 855."

When Selin Taylor accepted the patent he was bound and so was the Tribe and Government.

In the Choate case above the court said:

> "After he accepted the patent, the Indian could not be heard, either at law or equity, to assert any claim to the common property. If he is bound, so is the tribe and the government when the patent was issued."

Act of Congress unconstitutional so far as applied to the removal of the restriction upon Selin Taylor.

Defendants contend that the Act of Congress of April 21, 1904 (33 Stat. L. 204), under which plaintiff claims the Secretary of the Interior had power to remove the restrictions of Selin Taylor and thereby qualify him so he could and did make a valid conveyance of said land, is unconstitutional and void so far as applied to the removal of the restrictions of Selin Taylor, because said restrictions are a contract and property right secured to Selin Taylor and the defendants by the agreement and patent set out herein, and are protected from repeal by the Constitution of the United States and the Fifth Amendment thereof, and therefore the Secretary of the Interior was without power to remove said restrictions, and the foregoing Act did not confer such power, nor was it intended to confer such power.

The law is settled where Congress has passed an Act and property rights or contract rights are acquired under said Act, that thereafter Congress is

without power to pass an Act annulling or in any way affecting the rights so acquired under the former Act of Congress.

See *Carondelet Canal & N. Co.* v. *Louisiana*, 34 Supreme Court Reporter 627. We quote the following from above opinion:

> *"The repeal of a law which constitutes a contract is an impairment of its obligation.* 'It may be laid down as a general principle that whenever a law is in its own nature a contract, and absolute rights have vested under it, a repeal of it cannot divest those rights, or annihilate or impair the title so acquired.' 2 Story, Const. Sec. 1391. The provision of the Constitution against the impairment of the obligation of contracts was intended 'to prohibit every mode or device having such purpose. The prohibition is universal. It attempted no enumeration of the modes by which contracts might be impaired. It would have been unwise to have made such enumeration, since it might have been defective.' Id., Sec. 1386. The precaution was necessary. The prohibition is directed against the exertions of sovereignty which the citizens, unless protected by the organic law, would be impotent to resist, whether boldly declared in an explicit law or disguised in an ambiguous form."

Restrictions attached to land not repealable.

We contend that the restrictions against the alienation of the land involved contained in said agreement and patent from the Choctaw and Chickasaw Nations that conveyed said land to Taylor, that said restrictions are not a personal privilege and repealable but is an incident attached to the land itself for a limited period and is not repealable.

It seems evident that if said restrictions applied to Taylor personally, that in the event of his death said restrictions must end, but this Court has construed section 16 of the agreement, which contains said restrictions, and passed on this identical question in the case of *Mullen* v. *United States*, 224 U. S. 448.

This Court, in construing section or paragraph 16, on page 454 of Mullens case, said:

> "On the other hand, the proviso of paragraph 16—which relates to the additional portion of the allotment, or the so-called 'surplus' lands—contained a restriction upon alienation not only by the allottee but by his heirs."

By reference to certificate No. 2458 (Rec., p. 28), under which plaintiff claims the restrictions were removed, it will be observed that said certificate provides, briefly, for the removal of the restrictions upon the sale of the land described in said certificate, and this seems conclusive that the Government issued said cretificate upon the theory that restrictions sought to be removed by said certificate were on the land and not on Selin Taylor.

From the foregoing we contend that said restrictions are an incident attached to the land itself by the agreement and patent, for a limited period, for the protection of Selin Taylor against his own improvident acts and conditioned, as Taylor was wholly ignorant of land values, said protection was of great value to him and was to him property as much as the land itself, and said restrictions were not repealable; but if there is room for doubt as to

whether said restrictions were repealable that doubt under the rule of this Court should be resolved in favor of Taylor and against the repeal of said restrictions. In the Choate case, *supra*, this Court said:

> "6. But in the Government's dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than a hundred years, and has been applied in tax cases.
>
> For example, in Kansas Indians (*Blue Jacket* v. *Johnson County*, 5 Wall. 737, 760, 18 L. Ed. 667, 674), the question was whether a statute prohibiting levy and sale of Indian lands prevented a sale of state taxes. The rule of strict construction would have compelled a holding that the property was liable. But Justice Davis, in speaking for the court, said that 'enlarged rules of construction are adopted in reference to Indian treaties.' He quoted from Chief Justice Marshall, who said that 'the language used in treaties with the Indians shall never be construed to their prejudice, if words be made use of which are susceptible of a more extended meaning.' Again, in *Jones* v. *Meehan*, 175 U. S. 1, 44 L. Ed. 49, 20 Sup. Ct. Rep. 1, it was held that 'Indian treaties must be construed, not according to the technical meaning of their words, but in the sense in which they would naturally be understood by the Indians.' In view of the universality of this rule, Congress is conclusively presumed to have intended that the legislation under which these allotments

were made to the Indians should be liberally construed in their favor in determining the rights granted to the Choctaws and Chickasaws.

The provision that 'all land shall be nontaxable' naturally indicates that the exemption is attached to the land—only an artificial rule can make it a personal privilege. But if there is any conflict between the natural meaning and the technical construction—if there were room for doubt, or if there were any question as to whether this was a personal privilege and repealable, or an incident attached to the land itself for a limited period, that doubt, under this rule, must be resolved in favor of the patentee."

We quote the following from the Choate case, *supra:*

"But there was no intimation that the power of wardship conferred authority on Congress to lessen any of the rights of property which had been vested in the individual Indian by prior laws or contracts. Such rights are protected from repeal by the provisions of the Fifth Amendment."

We respectfully direct the Court's attention to the entire Choate case, *supra*, for in our opinion this entire case sustains our contention that under said agreement certain rights of property had been vested in Selin Taylor, to-wit, the right to be protected by the restrictions in said agreement against the alienation of the land involved herein.

The private property rights of Selin Taylor are secured and enforced to the same extent and in the same way as other residents or citizens of the United States.

We quote the following from the Choate case, *supra:*

> "7. There have been comparatively few cases which discuss the legislative power over private property held by the Indians. But those few all recognize that he is not excepted from the protection guaranteed by the Constitution. His private rights are secured and enforced to the same extent and in the same way as other residents or citizens of the United States. *Re Heff*, 197 U. S. 504, 49 L. Ed. 855, 25 Sup. Ct. Rep. 506; *Cherokee Nation* v. *Hitchcock*, 187 U. S. 307, 47 L. Ed. 190, 23 Sup. Ct. Rep. 115; *Jackson ex dem. Smith* v. *Gooddell*, 20 Johns. 188; *Lowry* v. *Weaver*, 4 McLean 82, Fed. Cas. No. 8584; *Whirlwind* v. *Vonder Ahe*, 67 Mo. App. 628; *Taylor* v. *Drew*, 21 Ark. 487. His right of private property is not subject to impairment by legislative action, even while he is, as a member of a tribe, subject to the guardianship of the United States as to his political and personal status. This was clearly recognized in the leading case of *Jones* v. *Meehan*, 175 U. S. 1, 44 L. Ed. 49, 20 Sup. Ct. Rep. 1."

Statutes of Arkansas in force in Indian Territory and applied to Indians.

The instrument that the plaintiff seeks to cancel by this proceeding was executed in the Indian Territory on March 11, 1907 (Rec., pp. 25 to 27), and on the date of its execution the statute of Arkansas

was in force in the Indian Territory and applied to Indians. Said statute was put in force by Act of Congress of February 19, 1903 (32 Stat. 841), and said statute was made to apply to Indians by Act of Congress of April 28, 1904 (33 Stat. 573), and we quote the following therefrom:

> "All laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said territory, whether Indian, freedman, or otherwise, and full and complete jurisdiction is hereby conferred upon the District Courts in said territory in the settlements of all estates of decedents, the guardships of minors and incompetents, whether Indians, freedmen or otherwise."

Further, Selin Taylor was a citizen of the United States, and was made a citizen with all the rights, privileges and immunities of such citizens by the Act of Congress set out below.

The Act of Congress of February 8, 1887 (24 Stat. 390), was amended by Act of March 3, 1901 (31 Stat. 1447), and Section 6 as amended is in part as follows:

> "* * * and every Indian of the Indian Territory is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges and immunities of such citizens, whether such Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner imparing or otherwise affecting the rights of any such Indian to tribal or other property."

It appears from the foregoing that the law is settled that Selin Taylor had the right to contract as he saw fit relating to his private property, and from a careful reading of the instrument (Rec., pp. 25 to 27) plaintiff seeks to cancel by this proceeding it will appear that Selin Taylor by said instrument employed Eli P. Williams, Elmer Williams and Charles H. Williams as his agents, with full, sole and absolute power to do any and all acts at any time that he could lawfully do which in any way related to said lands and the possession, control, rents, income and profits thereof.

In other words, that under the clearly expressed terms of said instrument, said agents stand in the shoes of Selin Taylor and have full power to do all lawful acts that Selin Taylor could do that relate to said lands and income thereof.

Facts Controlling This Case.

The facts controlling this case are the facts alleged in the defendants' answer (Rec., pp. 21 to 24); said facts were admitted by the plaintiff's demurrer to defendants' answer and are in part as follows:

That on May 23, 1903, Selin Taylor allotted said land and received his allotment certificate and patent therefor under Act of Congress approved July 1, 1902, known as An Act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians and for other purposes, hereinafter called agreement; that said agreement was ratified by Congress and by a majority of legal voters of the Choctaw and Chickasaw tribes in the manner required in

said agreement, and said agreement is for a valuable and sufficient consideration and is a binding contract upon the United States and Choctaw and Chickasaw Nations and all Choctaws and Chickasaws and Selin Taylor, and is in full force and effect.

That the Choctaw and Chickasaw Nations were owners of said land and the grantors in the patent that conveyed said land to Selin Taylor, and said Nations have not consented to the removal of the restrictions contained in said patent against the alienation of said land.

That Selin Taylor was a full-blood Choctaw Indian and did not understand the English language and was wholly ignorant of land values; that C. B. Campbell and James E. Whitehead induced Selin Taylor to execute to them, to his great property loss and damage, the deeds complained of herein.

That the rental value of said land is the sum of seventy-five dollars a year for each and every year since January 1, 1908.

All the facts controlling this case being admitted as stated above, it is hoped that this Honorable Court will decide this case upon its merits and render judgment in favor of the defendants as prayed for in the "Defendants' Answer to Plaintiff's Amended Petition to Quiet Title" (Rec., p. 24).

Respectfully submitted,

Eli P. Williams.

Ellen Williams

Charles A. Williams

Plaintiffs in Error.

In the Supreme Court of the United States

OCTOBER TERM 1915

No. 110

ELI P. WILLIAMS, ELMER WILLIAMS AND CHARLES H. WILLIAMS, Plaintiffs in Error,

vs.

BEN F. JOHNSON, Defendant in Error.

SUPPLEMENTAL BRIEF of PLAINTIFFS IN ERROR,

In the outset we desire to say we have in no wise abandoned our contention or anything that was said in our original brief entitled "Brief of Plaintiffs in Error" heretofore filed in this case and what we say herein is intended to supplement and strengthen what was said in the original brief and we respectfully direct this honorable court's attention to our original brief.

This case was submitted to the trial court upon the demurrer of the plaintiff (for demurrer see Record Page 31) to the answer of the defendants (for answer, see Record Page 21 to 30) to the amended petition to quiet title (for Petition see Record page 8 to 20) and the trial court sustained the plaintiff's demurrer and for judgment of the trial court rendered herein see Record Page 31 and 32.

The affect of the demurrer of the plaintiff to the answer of the defendants was to admit all facts plead and all the facts alleged in said answer (for answer see Record page 21, 22 and 23) and said facts control this case and for the convenience of the court said facts are divided into five paragraphs and are as follows:

FACTS CONTROLLING THIS CASE.

Paragraph 1.

Defendants admit that said land was allotted to one Selin Taylor, that the said Selin Taylor was a member of the Choctaw Tribe Indians; that on November 22nd, 1904, there was issued to him a patent covering the above described land, signed by Green McCurtain, principal chief of the Chickasaw Nation, and Douglas H. Johnson. Governor of the Choctaw Nation; that

said patent was approved by Thomas Ryan, acting Secretary of the Interior in behalf of the United States, that at the time of the allotment of said land, the same was under the law inalienable.

Paragraph 2.

Defendants allege that on May 23, 1903, Selin Taylor allotted said land, and received his allotment certificate and Patent therefor under an Act of Congress approved July 1, 1902, known as an Act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians, and for other purposes, hereinafter called Agreement; that said agreement was ratified by Congress, and by a majority of the legal voters of the Choctaw and Chickasaw Tribes, in the manner required in said Agreement, and said Agreement is for a valuable and sufficient consideration and is a binding contract upon the United States and upon the Choctaw and Chickasaw Nations, and all Choctaws and Chickasaws, and Selin Taylor, and is in full force and effect.

Paragraph 3.

Defendants allege that Selin Taylor is not a ward of the United States, and was not when he allotted said land.

By an Act of Congress approved March 3, 1901, (31 Stat. 1447) Selin Taylor was made a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens. A copy of said Act of Congress is hereto attached, marked "Exhibit H" and made a part hereof.

For Exhibit "H" see Record Page 30.

Paragraph 4.

Defendants allege that the Choctaw and Chickasaw Nations, and not the United States, are the Grantors in the Patent to Selin Taylor for said land, a copy of said Patent is hereto attached, and marked "Exhibit E," and made a part hereof; For Exhibit "E" see Record page 19; that said grantors, the Choctaw and Chickasaw Nations, imposed restrictions in said patent against the alienation of said land for the protection and benefit of Selin Taylor, and said grantors have not in any way consented to the removal of the restrictions against the alienation of said land contained in said patent; that said restrictions are in full force and effect and wholly disregarding said restrictions, so imposed in said patent. C. B. Campbell and James E. White-

head induced Selin Taylor to execute to them, to his great property loss and damage, the deeds complained of herein, and said deeds so executed by Selin Taylor, in violation of the restrictions upon alienation contained in his patent, are illegal and void.

Paragraph 5.

That said Patent contained the following clause: "Subject, however, to the provisions of the Act of Congress, approved July 1, 1902 (32 Stat. 641)" and on account of said clause in said patent the entire Act of Congress became a part of said patent, and a copy of Section 15-16-68 and 73 of said Act is hereto attached and marked "Exhibit F" and made a part hereof. (For Exhibit "F" see record Page 28). That Selin Taylor and the defendant claim title to said land under said Agreement, and also under the Patent to said land issued by the Choctaw and Chickasaw Nations to Selin Taylor; that said agreement, and also said Patent imposed restrictions upon the alienation of all lands allotted to members of said tribes, for the protection and benefit of said members, and that Selin Taylor was a full blood Choctaw Indian, and a member of the Choctaw tribe of Indians, and did not

understand the English language, and was wholly ignorant of land values, and was in need of, and entitled to the protection and benefit of said restrictions so imposed. Conditioned as Selin Taylor was on the date of his Deeds complained of herein, to C. B. Campbell and James E. Whitehead, said protection was of great value to him, and was to him property, as much as the land itself.

The Facts Stated Above That Apply to This Case Are Briefly Stated as Follows:

That the Choctaw and Chickasaw Nations are the grantors in the patent to Selin Taylor for said land, that said grantors, the Choctaw and Chickasaw Nations, imposed restrictions in said patent against the alienation of said land for the protection and benefit of Selin Taylor, and said grantors have not in any way consented to the removal of the restriction against the alienation of said land contained in said patent; that said restrictions are in full force and effect and wholly disregarding said restrictions, so imposed in said patent. C. B. Campbell and James E. Whitehead induced Selin Taylor to execute to them, to his great property loss and damage, the deeds com-

plained of herein, and said deeds so executed by Selin Taylor, in violation of the restrictions upon alienation contained in his patent are illegal and void.

That Selin Taylor was a full blood Choctaw Indian, and a member of the Choctaw tribe of Indians, and did not understand the English language, and was wholly ignorant of land values, and was in need of, and entitled to the protection and benefit of said restrictions so imposed. Conditioned as Selin Taylor was on the date of his Deeds complained of herein, to C. B. Campbell and James E. Whitehead, said protection was of great value to him, and was to him property, as much as the land itself.

From the above the fact is established that the Choctaw and Chickasaw Nations were the grantors in the patent that conveyed said land to Selin Taylor, that said patent contained restrictions against the alienation of said land and that said land was not alienable under said restrictions when Selin Taylor executed said deeds, and that the Choctaw and Chickasaw Nations were the grantors in the patent to Selin Taylor for said land and it has been settled that said Nations were the own-

ers of the fee simple title to the land involved herein, at time and on the date said Nations executed the patent to Selin Taylor.

Fleming v. McCurtain 215 to S. 56.

The title of said Nations to said land is rested on a patent from the United States to said Nations and the granting clause in said patent is as follows.

> "To have and to hold the same in fee simple to them and their descendants, to inure to them while they shall exist as a Nation and live on it, liable to no transfer or alienation, except to the United States or with their consent"

We contend that under granting clause above, said Nations could convey, with the consent of the United States their land to any one they pleased and upon such conditions as said Nations saw fit.

That said Nations did convey the land involved herein by patent to Selin Taylor.

That said patent to Selin Taylor contained the following clause:

> "Subject however to the provisions of the Act of Congress approved July 1, 1902 (32 Stat. 641)"

By above clause said Act of Congress and all the restrictions against the alienation of

said lands contained in said Act of Congress became a part of said patent to Selin Taylor as effectually and with the same force as if written in full in said patent that under said instructions so contained in said patent to Selin Taylor he was without power to alienate said land when he executed the deeds complained of herein.

We contend that it makes no difference whether the Act of Congress of July 1, 1902 (32 Stat. 641) which contained the restrictions upon alienation is considered as an agreement and contract or as an Act of Congress, for if it is an Act of Congress it is in the nature of a contract and absolute rights have vested under it and repeal of it cannot divest those rights.

Carondelet Canal & N. Co. v. Louisiana 233 US 362. We quote the following from above opinion:

> "The repeal of a law which constitutes a contract is an impairment of its obligation. 'It may be laid down as a general principle that whenever a law is in its own nature a contract, and absolute rights have vested under it, a repeal of it cannot divest those rights, or annihilate or impair the title so acquired.' 2 Story, Const. Sec. 1391. The provision of the Constitution against the impair-

ment of the obligation of contracts was intended 'to prohibit every mode or device having such purpose. The prohibition is universal. It attempted no enumeration of the modes by which contracts might be impaired. It would have been unwise to have made such enumeration, since it might have been defective.' Id., Sec. 1386. The precaution was necessary. The prohibition is directed against the exertions of sovereignty which the citizens, unless protected by the organic law, would be impotent to resist, whether boldly declared in an explicit law or disguised in an ambiguous form."

Brief of Defendant in Error.

We quote the following from page 4 of the "Brief of Defendant in Error."

> "On March 11th, 1907, Selin Taylor executed a power of attorney and contract to sell to the plaintiffs in error. This instrument was recorded September 28th, 1908. It authorizes plaintiff in error to take possession of the land, collect and receive all rents and revenues, binds them to account to Taylor and his heirs, conveys an absolute interest in fee simple in such land and rents to them."

The latter part of the clause quoted above from the Brief of Defendant in Error in sub-

stance says that Selin Taylor conveys an absolute interest in fee simple in said land to the Plaintiffs in Error. This is an error which will appear from a careful examination of said power of attorney. For said power of attorney see Rec. pages 25, 26 and 27. We quote the following from said power of Attorney (Rec. 26.)

> Section 4. I hereby sell, convey and transfer to my agents an absolute interest in fee simple in all and in any part of said lands that I can lawfully sell or alienate."

No language can make it plainer than Section 4 quoted above, that Selin Taylor did not sell and did not attempt to sell an interest in only such lands as he had a lawful right to sell or alienate and this entire power of attorney makes it plain that Selin Taylor did not do any act and did not intend to do any acts relating to said lands and rents thereof that he did not have a lawful right to do and that he did not authorize his agents to do any acts relating to said land except such acts as he could lawfully do himself.

The power of attorney sought to be canceled by this proceeding was executed in Indian Territory and is dated 11th day of March 1907 (Rec. p. 27) and it is controlled by the laws in force

in said Indian Territory on the date of its execution, which was the laws of Arkansas and Chapter 27 of said laws on conveyances of real estate was put in force in Indian Territory by Act of Congress of Feb'y 19, 1903 (32 Stat. 841) and under said laws Selin Taylor had the right to contract as he did in said power of attorney.

Patent Was a Finality.

We contend that when the owners of said land, the Choctaw and Chickasaw Nations executed said patent in favor of Selin Taylor and said patent was approved by the United States and said patent was delivered to and accepted by Selin Taylor that said patent became a finality with all the provisions and restructions contained therein and could not be attacked except upon two grounds; mistake or fraud that no change could be made in the terms and provisions of said patent except by and with the consent of all of the parties to said patent, to wit, the grantors therein, the Choctaw and Chickasaw nations, the United States and Selin Taylor.

That the grantors in said patent who were the owners of the fee simple title to said land,

the Choctaw and Chickasaw nations, have not consented to the removal of the restrictions against the alienation of said land contained in the patent to Selin Taylor, this will appear from paragraph 3 of the "Facts Controlling This Case" and we quote the following therefrom:

> "That said grantors, the Choctaw and Chickasaw Nations, imposed restrictions in said patent against the alienation of said land for the protection of Selin Taylor, and said grantors have not in any way consented to the removal of the restrictions against the alienation of said land contained in said patent:"

From the facts quoted above it is settled that the Choctaw and Chickasaw Nations, the grantors in the patent that contained the restrictions against the alienation of the land involved herein, and that conveyed the land to Selin Taylor, have not consented to the removal of said restrictions.

All the facts controlling this case being admitted as stated above, it is hoped that this Honorable Court will decide this case upon its merits and render judgment in favor of the defendants as prayed for in the "Defendants'

Answer to Plaintiff's Amended Petition to Quiet Title" (Rec., p. 24).

Respectfully submitted,

Eli P Williams

Elmer Williams

Charles H Williams

Plaintiffs in Error.

In the Supreme Court of the United States

October Term, 1914

Eli P. Williams, Elmer Williams, and Charles H. Williams,
Plaintiffs in Error,
vs.
Ben F. Johnson,
Defendant in Error.

No. 414

BRIEF OF DEFENDANT IN ERROR

STATEMENT

Selin Taylor, a Choctaw Indian by blood, duly enrolled and approved as such on May 23rd, 1903, selected the land in controversy as that portion of his allotment of the lands of the Choctaw and Chickasaw Nations other than his homestead. Certificate of allotment and patent sub-

sequently issued and were delivered to and accepted by the allottee. The patent approved by the Secretary of the Interior August 24th, 1905, recites that it is "subject, however, to the provisions of the Act of Congress approved July 1st, 1902 (32 Stat. 641)."

Sections 15 and 16 of the Act of July 1st, 1902, provide:

> "15. Lands allotted to members and freedmen shall not be affected or incumbered by any debt, deed or obligation of any character contracted prior to the time the said land may be alienated under this Act, nor shall said land be sold except as herein provided.
>
> "16. All lands allotted to the members of said tribes except such lands as is set aside to each for a homestead as herein provided shall be alienable after issuance of patent, as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years, in each case from date of the patent. Provided, that such land shall not be alienated by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value."

The Act of April 21, 1904 (33 Stat. 204) provides:

> "And all the restrictions upon the alienation of lands of all allottees of either of the

Five Civilized Tribes of Indians, who are not of Indian blood, except minors, or except as to homesteads, are hereby removed, and all restrictions upon the alienation of all other allottees of said tribes except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe upon application to the United States Indian Agent at the Union Agency in charge of the Five Civililized Tribes, if said agent is satisfied upon a full investigation of each individual case that such removal of restrictions is for the interest of said allottee. The finding of the United States Indian Agent and the approval of the Secretary of the Interior shall be in writing, and shall be recorded in the same manner as patents for lands are recorded."

Pursuant to the provisions of this Act of April 21, 1904, and the regulations of the Secretary thereunder, the Secretary, on the application of Selin Taylor, on February 9, 1906, found that the removal of restrictions on the sale of the land in controversy would be for the best interest of the allottee, and issued a certificate for that purpose, which was recorded as provided by law on March 2nd, 1906. On February 16th, 1906, Selin Taylor conveyed the land to C. B. Campbell, the deed reciting a consideration of $575.00. On November 15th, 1906, Selin Taylor and wife con-

veyed the land to James E. Whitehead for a consideration of $1,000.00. Campbell conveyed to Johnson, defendant in error, in April, 1906. Whitehead conveyed to McNeill, and McNeill to Johnson in October, 1909. Johnson took possession from his grantor, Campbell, who had been in possession since March, 1906.

On March 11th, 1907, Selin Taylor executed a power of attorney and contract to sell to the plaintiffs in error. This instrument was recorded September 28th, 1907. It authorizes plaintiff in error to take possession of the land, collect and receive all rents and revenues, binds them to account to Taylor and his heirs, conveys an absolute interest in fee simple in such land and rents to them, authorizes them to sell and convey by deed in fee simple, and provides that the instrument shall be in force until the 31st day of December, 1931, and shall not be revoked by death of the allottee.

October 28th, 1909, defendant in error filed suit to cancel the instrument held by plaintiffs in error and quiet his title. Judgment was rendered as prayed for. The cause was appealed to the Supreme Court of Oklahoma, which court affirmed the judgment. From such judgment plaintiffs in error prosecute a writ to this court.

ARGUMENT AND AUTHORITIES

Plaintiffs in error, page 8 of brief, now concede that Congress may amend, modify or repeal a treaty agreement with an Indian tribe, as held in the following cases:

Godfrey v. *Iowa Land & Trust Co.*, 21 Okla. 293.
Wadsworth v. *Boyson*, 148 Fed. 771.
Ward v. *Racehorse*, 163 U. S. 503.
Fang-Yu-Ting v. *U. S.*, 149 U. S. 698.
Thomas v. *Gay*, 168 U. S. 262.
Lonewolf v. *Hitchcock*, 187 U. S. 553.
Tiger v. *Western Inv. Co.*, 221 U. S. 286.
Heckman v. *U. S.*, 224 U. S. 413.

The first contention of the plaintiffs in error is that the provisions of the Act of July 1st, 1902, created a contract between the allottee and the Government, and that Congress was without power to alter or impair such contact by providing for the removal of restrictions on the sale of land as in the Act of April 21, 1904, and that such Act is therefore invalid. *Choate* v. *Trapp*, 224 U. S. 164, and *Jones* v. *Mehan*, 175 U. S. 1, are relied upon to support this contention.

In *Jones* v. *Mehan* this court held in effect that the Act of June 30th, 1834, showed an intention of Congress to remove the general restric-

tions upon the alienation of land by individual Indians, and that the rights of the lessees of the heirs of a deceased Indian who took title under such Act could not be divested by subsequent acts of the lessor or of Congress. We do not think this case is in point. The restrictions on alienation were removed; the allottee took title to the land free from all restrictions. His heir inherited the land free from restrictions and leased the same. The lessee acquired the right while the land was free from all restrictions. This right became vested, and, of course, could not be disturbed by any subsequent legislative act.

In *Choate* v. *Trapp* this court held, in effect, that under the provisions of the Act of June 28, 1898, the Choctaw and Chickasaw allottees took their land in severalty, the same to be non-taxable for a specified period; that this was one consideration for accepting allotments of land, and that such allottees therefore acquired vested rights of exemption from state taxation, protected by the 5th amendment to the Constitution. This case is clearly distinguishable from the one now under consideration. At page 673 this court say:

> "But the exemption and non-alienability were two separate and distinct subjects; one

conferred a right, the other imposed a limitation. Defendant's argument also ignores the fact that in this case though the land could be sold after five years, it might remain non-taxable for 16 years longer if the Indian retained title during that length of time. Restrictions on alienation were removed by lapse of time. He could sell part after one year, a part after three years, and all except homestead after five years. The period of exemption was no coincident with this five year limitation. On the contrary, the privilege of non-taxability might last for 21 years, thus recognizing that the two subjects related to different periods, and that neither was dependent on the other. The right to remove the restriction was in pursuance of the power under which Congress could legislate as to the status of the ward, and lengthen or shorten the period of disability, but the provisions that the land should be non-taxable was a property right which Congress undoubtedly had the power to grant. That right fully vested in the Indians and was binding upon Oklahoma."

This court makes a clear distinction here between the exemption from taxation and the restriction upon alienation, holding that one is a property right, the other a limitation, and we suggest that in this case the court recognized the doctrine that the right could not be destroyed, but that the limitation could be removed by Congress. This is the gist of the case now before this court. The Act of April 21, 1904,

made provisions for removing the limitation at the option of the allottee, but did not seek to destroy or affect any right which the allottee had.

No contract or agreement can exist as between the Government and these Indians by reason of the treaty. Section 2079, Revised Statutes of the United States, provides:

> "No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty * * * "

Construing this statute, the court say in *United States* v. *Kagama,* 108 U. S. 375:

> "After an experience of 100 years of treaty making system of government, Congress has determined upon a departure —to govern them, the Indians, by Acts of Congress."

See also:

Lonewolf v. *Hitchcock,* 187 U. S. 553.
Choctaw Nation v. *Hitchcock,* 119 U. S. 1.
Stephens v. *Cherokee Nation,* 174 U. S. 445.
Star v. *Long Jim,* 227 U. S. 613.

In *Star* v. *Long Jim* this court, speaking with reference to section 2079 of the Revised Statutes, say:

> "But whatever may have been the intent of

> the framers of the agreement, section 2079, Revised Statutes, prohibited the making of any contract with the Indians by treaty, and the Moses agreement was expressly made upon the condition that Congress will make an appropriation of funds necessary to accomplish the foregoing and confirm this agreement."

The second contention is that the allottee acquired some vested right in the restrictions upon the sale of his land under the provisions of the Act of July 1st, 1902, and that Congress is without power to destroy that right by an Act permitting the allottee to convey without restriction, and that the Act of April 21, 1904, is in conflict with the 5th amendment to the Constitution.

We think the case of *Choate* v. *Trapp, supra*, settles this question against the contention of plaintiff in error. In that case, the court clearly distinguished between a right and a limitation under the particular statutes involved in this controversy. Restriction upon alienation of lands by these allottees is merely a limitation upon the power to convey. This limitation may be removed by Congress whenever it determines that it will be for the best interest of the allottee, and Congress is the sole judge of this question. The Act in controversy does not remove the restrictions.

It merely provides a method whereby the allottee may by his own application secure a certificate removing the restrictions on the sale of his land. He is not required to do so. The restrictions are not removed until his certificate is issued. The certificate cannot be issued except that the allottee makes application therefor. In fact, it is left entirely with the judgment of the allottee. He acts voluntarily, and if he presents facts to the Department which convince the officers that it will be to his interest to permit a sale of his land, then and then only the Act authorizes the conveyance. Instead of being a vested right, the restriction is only a limitation, and Congress has provided that the allottee may voluntarily remove this limitation by his own act.

We respectfully submit that the judgment of the Supreme Court of Oklahoma should be affirmed.

REFORD BOND,
ALGER MELTON,
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Attorneys for Defendant in Error.